

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

OPTIS WIRELESS TECHNOLOGY,) (
LLC, ET AL) (
VS.) (CIVIL ACTION NO.
2:19-CV-66-JRG
MARSHALL, TEXAS
AUGUST 3, 2020
APPLE INC.) (9:44 A.M.

TRANSCRIPT OF JURY TRIAL

MORNING SESSION

BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(Venire panel in.)

COURT SECURITY OFFICER: All rise.

THE COURT: Thank you. Be seated, please.

Good morning, ladies and gentlemen. I don't know what those extraneous noises are. If they continue, I'll stop and get an IT person up here. Otherwise, we'll continue.

Welcome. Good to have you here this morning. My name is Rodney Gilstrap, and I am the Chief United States District Judge for the Eastern District of Texas. I have lived in Marshall since 1981. I practiced law here for about 30 years. I've been on the bench in this court since 2011. And I have a confession to make to all of you. I was not born in Texas, but I got here as quick as I could.

I came to Texas to enroll as a freshman at Baylor University in Waco. I stayed there and completed my undergraduate studies and then attended Baylor Law School.

I am married. I have two grown children. And my wife owns and operates a retail floral business here in Marshall.

Now, I tell you all these things about me because in a few minutes, I'm going to let each of you give me the same kind of information about yourselves, and I think you're entitled to know as much about me as I'm about to

09:45:43 1 find out about each of you.

09:45:44 2 We are about to engage in the selection of a jury
09:45:48 3 in a civil case involving allegations of patent
09:45:55 4 infringement. But before we go any further, I want to
09:45:58 5 briefly mention some of the health -- health and safety
09:46:01 6 precautions that we're going to be taking during this
09:46:04 7 trial.

09:46:04 8 Each of you should have gotten a letter from me
09:46:07 9 attached to your summons when you were notified to appear
09:46:12 10 for jury duty here talking about some of the precautions
09:46:15 11 that the Court is putting in place. There are some
09:46:17 12 additional safeguards that I'll be implementing as we go
09:46:21 13 forward with jury selection today and then begin with the
09:46:23 14 trial of the case itself, and I will go over these when we
09:46:26 15 get to that part of the process.

09:46:27 16 Also, as to the eight of you that are going to be
09:46:31 17 selected to serve as the jurors in this case, there are a
09:46:34 18 few certain additional steps and procedures that we'll be
09:46:40 19 implementing during the trial of the case itself, and I
09:46:42 20 want to mention a few of these to you now.

09:46:44 21 Each member of the jury, after the jury is
09:46:47 22 selected and we begin the trial, each member of the jury
09:46:49 23 will have their temperature taken, as happened this
09:46:53 24 morning, when you appear at the courthouse for each day's
09:46:57 25 portion of the trial.

09:46:59 1 Once the eight of you are selected and seated in
09:47:03 2 the jury box, then you're going to be given a plastic face
09:47:06 3 shield. Very simple to use. And it will provide an
09:47:22 4 additional layer of protection for you as you mingle with
09:47:25 5 each other on the jury.

09:47:26 6 Also, the eight of you will be -- that are
09:47:29 7 selected will be spaced in the jury box so that there are
09:47:32 8 no two of you seated directly next to each other. And once
09:47:35 9 you're seated in the jury box, I'm going to ask that the
09:47:38 10 eight of you selected as the jury keep those same seats and
09:47:41 11 those same positions throughout the trial of the case.

09:47:43 12 Also, I can tell you that every evening when we
09:47:50 13 recess before the next day of the trial, a special deep
09:47:55 14 cleaning will take place with regard to the jury box, the
09:47:57 15 jury room, and all the restrooms that are available to the
09:48:00 16 jury in the jury room. That will happen every day.

09:48:03 17 Also, ladies and gentlemen, for the eight of you
09:48:06 18 that are selected to be on the jury, the Court is going to
09:48:11 19 provide you with a separate boxed lunch each day. You will
09:48:14 20 not leave the courthouse to go to lunch. You'll have a
09:48:17 21 separate lunch provided to you that you'll enjoy in the
09:48:20 22 jury room so that you won't have to leave and take the
09:48:23 23 time, also risk any possible exposure while you're out
09:48:27 24 looking for lunch. That won't be necessary.

09:48:30 25 As I've said, there will be perhaps a few other

09:48:37 1 precautions, and I'll mention to you -- those to you as we
09:48:40 2 get to them. All of these are intended so that we can try
09:48:43 3 this case and have both a fair and impartial and a safe
09:48:47 4 jury trial.

09:48:48 5 Now, if you'll indulge me for a minute, I want to
09:48:52 6 briefly review with the panel as a whole how we came to
09:48:56 7 have our American civil jury trial system.

09:48:58 8 If you go back in ancient history and you look at
09:49:01 9 the Pentateuch, the first five books of the Old Testament,
09:49:05 10 you'll see that the ancient Jewish Nation empaneled juries
09:49:08 11 to decide issues of property value and property ownership.

09:49:12 12 The ancient Greeks began using a jury system about
09:49:16 13 1500 BC. And the Romans, as they did with many things,
09:49:22 14 they copied the jury system from the Greeks, and it was the
09:49:26 15 Romans that brought the jury system to what we now know as
09:49:30 16 England when they copied that -- when they conquered, I'm
09:49:35 17 sorry, when they conquered that island in the 4th Century
09:49:38 18 AD.

09:49:38 19 So by the 12th century AD jury trials had been a
09:49:42 20 part of everyday life and the ordinary jury system, or
09:49:45 21 judicial system, in England for 800 years.

09:49:48 22 But then in the 12th century AD, a tyrannical king
09:49:53 23 came to the throne of England named King John. And King
09:49:59 24 John attempted to do away with the jury trial system.
09:50:02 25 King John had many other disputes with his nobles, and

09:50:05 1 those disputes, including his attempts to limit or do away
09:50:09 2 with the jury trial, brought that country to the verge of
09:50:12 3 civil war.

09:50:12 4 But civil war was avoided because the king and his
09:50:16 5 nobles settled their -- settled their disputes and reached
09:50:19 6 an agreement at a place called Runnymede. And the document
09:50:22 7 that they all signed resolving those disputes and
09:50:26 8 reinstituting and making clear that the jury trial system
09:50:30 9 would be a continuing part of everyday life in England,
09:50:33 10 that document is called the Magna Carta. I'm sure many of
09:50:37 11 you have heard of that.

09:50:38 12 So you can see, ladies and gentlemen, that the
09:50:42 13 jury trial system was deeply ingrained in our founding
09:50:49 14 fathers when they came to these shores as British colonists
09:50:53 15 years later.

09:50:54 16 I will tell you, ladies and gentlemen, just as an
09:50:56 17 interesting fact, 28 of our 50 United States have adopted
09:51:00 18 the exact language regarding jury trials from the Magna
09:51:05 19 Carta in their state constitutions.

09:51:08 20 But, as I say, our founding fathers were well
09:51:12 21 ingrained with the jury trial system when they came to
09:51:16 22 America as British colonists, and the jury trial system
09:51:20 23 flourished in America for more than a hundred years, until
09:51:24 24 another tyrannical king came to the throne of Great
09:51:29 25 Britain. And this time his name was King George, the III.

09:51:32 1 And King George, the III, like King John before
09:51:33 2 him, attempted to limit or do away with the system of jury
09:51:36 3 trials.

09:51:37 4 And when Thomas Jefferson sat down to write the
09:51:40 5 document listing all the complaints against the British
09:51:44 6 Crown that would necessitate us seeking our own independent
09:51:48 7 status as an independent country, that document you all
09:51:51 8 know to be the Declaration of Independence, Mr. Jefferson
09:51:57 9 included in the declaration among those disputes a specific
09:52:01 10 provision calling out King George's attempts to limit or do
09:52:04 11 away with the right to trial by jury as one of the reasons
09:52:08 12 necessitating our separation from England and our becoming
09:52:12 13 an independent nation.

09:52:13 14 And once we did become an independent nation,
09:52:18 15 ladies and gentlemen, we adopted the governing document for
09:52:22 16 our country, which is the supreme law of the land, and you
09:52:25 17 all know that to be the United States Constitution.

09:52:28 18 And immediately after the ratification of the
09:52:30 19 Constitution, we added 10 amendments to the constitution.
09:52:36 20 You all know that to be the Bill of Rights. And in that
09:52:39 21 Bill of Rights, the Seventh Amendment added to the
09:52:42 22 Constitution, guarantees the right to trial by jury in a
09:52:46 23 civil case such as this one.

09:52:48 24 So, as American citizens for more than 200 years,
09:52:52 25 we have had the constitutionally guaranteed right pursuant

09:52:56 1 to the Seventh Amendment to our Constitution to resolve our
09:52:59 2 civil disputes in a form known as trial by jury, just what
09:53:04 3 we are about to engage in in this case.

09:53:06 4 So by being here today, ladies and gentlemen, in a
09:53:14 5 very real way, you are doing your part as good citizens to
09:53:17 6 preserve, protect, and defend the Constitution of the
09:53:20 7 United States, including particularly that
09:53:24 8 constitutionally-guaranteed right to the trial by jury as
09:53:28 9 set out in the Seventh Amendment.

09:53:29 10 I always tell citizens who appear for jury duty,
09:53:33 11 just as you have this morning, that in my personal opinion,
09:53:38 12 jury service is the second highest form of public service
09:53:41 13 that any American citizen can perform. In my personal
09:53:45 14 opinion, the highest form of public service that any
09:53:48 15 American can perform are those young men and women that
09:53:52 16 serve in our armed forces.

09:53:53 17 Now, later in the process this morning, the
09:54:01 18 lawyers for each of the parties are going to address the
09:54:03 19 jury panel as a whole, and they're going to ask you various
09:54:07 20 questions, ladies and gentlemen.

09:54:09 21 I want you to understand as a part of this process
09:54:12 22 that the lawyers are not seeking to inquire into your
09:54:15 23 private affairs unduly. In other words, they are not
09:54:20 24 trying to be nosy and delve into your personal business.
09:54:26 25 They are trying to ask questions that will allow them as a

09:54:29 1 part of the process to secure a fair and an impartial jury
09:54:33 2 to hear the evidence in this case.

09:54:40 3 I don't know if it will happen this morning, it
09:54:43 4 rarely does, but I need to tell you that if as a member of
09:54:46 5 the panel you are asked a question that you believe in your
09:54:50 6 own personal view is so personal and so private to you that
09:54:54 7 you're not comfortable answering it in front of everyone
09:54:57 8 else, then you simply have the right to say, I'd like to
09:55:00 9 discuss that with Judge Gilstrap.

09:55:01 10 And if that's your response, I'll make a time and
09:55:03 11 a place for you to answer that question outside of the
09:55:05 12 presence of everyone else on the panel. But, again, ladies
09:55:08 13 and gentlemen, that rarely comes up. I do not expect it
09:55:12 14 this morning, but should it come up, you do have that
09:55:16 15 option.

09:55:16 16 One thing that is important for each of you to
09:55:22 17 remember with regard to the questions you will be asked
09:55:25 18 this morning, and that is that you need to give full,
09:55:28 19 complete, and truthful answers to each question. Remember,
09:55:31 20 ladies and gentlemen, there are no wrong answers to any of
09:55:35 21 the questions you're going to be asked, as long as the
09:55:37 22 answers you give are full, complete, and truthful.

09:55:40 23 Now, as a part of the process, we will select the
09:55:47 24 jury today, and we will then move directly into the trial
09:55:50 25 of this case. And I expect the trial of this case before

09:55:54 1 the jury to take the remainder of this week, and it's even
09:55:58 2 possible that it may extend over to the beginning, maybe
09:56:02 3 Monday of next week.

09:56:04 4 So today is the 3rd of August, Friday is the 7th
09:56:07 5 of August, and Monday of next week would be the 10th of
09:56:11 6 August. If there are any of you on the panel who have a
09:56:14 7 surgery procedure scheduled for yourselves or somebody in
09:56:17 8 your immediate family, you have non-refundable airline
09:56:22 9 tickets purchased to go somewhere for business or pleasure
09:56:25 10 you can't get your money back on, if there's some very
09:56:28 11 serious reason why if you were selected you could not be
09:56:31 12 here, let's just say through the beginning of next week,
09:56:36 13 Monday the 10th or thereabouts, and that's my best
09:56:39 14 estimate, ladies and gentlemen, if there are any of you
09:56:41 15 that could not be available during that time period if you
09:56:43 16 were selected, I need you to raise your hands and let me
09:56:47 17 make a note of that.

09:56:50 18 All right. And you all are a good distance away
09:56:53 19 from me.

09:56:53 20 I see No. 16, sir, and you can put your hand down,
09:56:58 21 Mr. Huddleston.

09:56:59 22 And No. 37 in the back is Ms. Hood. Thank you.

09:57:03 23 Anybody besides Mr. Huddleston or Ms. Hood?

09:57:08 24 Let me see your number, sir. 27. All right.

09:57:15 25 Mr. Beasley.

09:57:16 1 Anybody besides those three who could not be here
09:57:19 2 if you were selected?

09:57:21 3 Okay. Thank you, ladies and gentlemen.

09:57:23 4 Also, ladies and gentlemen, I need to ask you if
09:57:31 5 anyone on the panel may have talked to you or you have any
09:57:36 6 knowledge about a process that might have taken place where
09:57:41 7 people in our area participated in a mock trial or a
09:57:45 8 practice trial session undertaken by either of the parties
09:57:49 9 in this case.

09:57:51 10 And let me explain. It's not uncommon for lawyers
09:57:54 11 in a case like this to hire local citizens in the area
09:57:58 12 where a jury trial will take place and practice their
09:58:02 13 arguments and their evidence before them and get feedback
09:58:06 14 from those mock jurors or practice jurors about their
09:58:10 15 evidence and about their arguments. And that may have
09:58:13 16 taken place in this case.

09:58:17 17 So my question is, if there's anyone on the panel
09:58:20 18 who has had anyone talk to you or communicate with you in
09:58:26 19 any way about such a practice trial or a mock trial that
09:58:29 20 might have taken place, whether it's firsthand, secondhand,
09:58:34 21 thirdhand, have any of you heard anything from anybody
09:58:38 22 about a mock trial or a practice trial that would have
09:58:41 23 taken place in regard to this case? If you have, please
09:58:46 24 raise your hands.

09:58:48 25 And I don't see anybody with a raised hand in the

09:58:51 1 courtroom. Thank you.

09:58:52 2 Also, kind of in the same vein, ladies and
09:58:54 3 gentlemen, I need to ask if any of you have seen or heard
09:58:58 4 or read anything in newspapers or other media about this
09:59:02 5 case before today. If you've seen or read anything or
09:59:06 6 heard anything about this case before today, please raise
09:59:09 7 your hand and let me make a note of that.

09:59:14 8 I don't, again, see a single hand in the courtroom
09:59:17 9 going up. Did I miss anybody? No, okay. Then I'll take
09:59:23 10 it no one has seen or heard anything in the media or any
09:59:26 11 newspapers about the case. Thank you.

09:59:27 12 All right. At this time, I'm going to call for
09:59:30 13 announcements on the record in the case of Optis Wireless
09:59:34 14 Technology, LLC, Optis Cellular Technology, LLC, PanOptis
09:59:39 15 Patent Management, LLC, and Unwired Planet, LLC, and
09:59:43 16 Unwired Planet International Limited versus Apple Inc.
09:59:49 17 This is Civil Case No. 2:19-CV-66.

09:59:54 18 And, counsel, as you give your announcements, if
09:59:56 19 you'll identify and introduce those at the counsel tables
09:59:59 20 with you.

10:00:00 21 We'll begin with the Plaintiff. What says the
10:00:03 22 Plaintiff?

10:00:04 23 MR. BAXTER: Thank you. Good morning, Your Honor.
10:00:14 24 Sam Baxter from McKool Smith, along with my partner,
10:00:18 25 Jennifer Truelove from McKool Smith and my good friend

10:00:20 1 Jason Sheasby. And we'll be trying this case, Your Honor.

10:00:23 2 We're ready.

10:00:24 3 THE COURT: Thank you, Mr. Baxter.

10:00:25 4 What says the Defendant?

10:00:27 5 MS. SMITH: Good morning, Your Honor, ladies and

10:00:35 6 gentlemen. Melissa Smith of Gillam & Smith on behalf of

10:00:38 7 Apple. I'll be trying this case with my good friend,

10:00:42 8 Mr. Joe Mueller, and Ms. Jamie Laird.

10:00:45 9 Your Honor, Apple is ready to proceed.

10:00:47 10 THE COURT: Thank you, Ms. Smith.

10:00:48 11 And, ladies and gentlemen of the jury, since eight

10:00:51 12 of you are going to be our jury in this case, there are

10:00:53 13 more lawyers than these six involved in this trial. I've

10:00:56 14 limited the number to three on each side for jury selection

10:01:00 15 purposes so we'd have the ability to space everybody

10:01:05 16 adequately at the counsel tables.

10:01:07 17 But once the trial starts, you'll see more lawyers

10:01:10 18 for both the Plaintiffs and the Defendants in the

10:01:11 19 courtroom.

10:01:12 20 All right. As I've told you, ladies and

10:01:18 21 gentlemen, this is a civil trial arising under the patent

10:01:21 22 laws of the United States. What the Plaintiffs are

10:01:23 23 claiming in this case is that patents that they own were

10:01:28 24 infringed by the Defendant, and they're seeking money

10:01:32 25 damages because of that infringement.

10:01:33 1 The Defendant denies that it infringes any of the
10:01:37 2 Plaintiffs' asserted patents, and they contend that those
10:01:41 3 patents are invalid.

10:01:43 4 Now, what I've just told you in a couple of
10:01:45 5 sentences is a very high-level, simple overview of what
10:01:49 6 this is about. I know each of you on the panel have seen
10:01:52 7 the patent video prepared by the Federal Judicial Center.
10:01:56 8 And having seen that, you know more about patent cases than
10:01:59 9 most people do when they arrive at the courthouse.

10:02:01 10 As I've said, ladies and gentlemen, the lawyers on
10:02:04 11 both sides are about to question the panel to gather
10:02:09 12 information so that they can exercise their strikes and
10:02:12 13 complete the process of securing a fair and an impartial
10:02:16 14 jury to hear the evidence in this case.

10:02:18 15 Again, there are no wrong answers to any of the
10:02:21 16 questions you'll be asked, as long as the answers you give
10:02:25 17 are full, complete, and truthful.

10:02:26 18 As I mentioned, the lawyers are not trying to be
10:02:30 19 nosy. They're trying to gain useful information to help
10:02:34 20 secure a fair and an impartial jury.

10:02:40 21 If any lawyer should ask a question of anyone on
10:02:43 22 the panel that for any reason I think is improper, I'll
10:02:47 23 certainly stop them, ladies and gentlemen. But I want you
10:02:49 24 to understand, these are very experienced trial lawyers. I
10:02:53 25 don't expect that to happen. They're very familiar with

10:02:56 1 the process, and they're very familiar with the Court --
10:02:58 2 what the Court expects of them during this process today.

10:03:03 3 There is one thing, however, before the lawyers
10:03:06 4 begin their questioning that I do want to call your
10:03:10 5 attention to, because it's quite possible that one or both
10:03:11 6 sides are going to ask you about this when they question
10:03:13 7 the panel, and that is the burden of proof that will be
10:03:16 8 applied in this case.

10:03:18 9 In a patent case such as this, the jury may be
10:03:21 10 called upon to apply two different burdens of proof. The
10:03:26 11 jury may apply the burden of proof known as the
10:03:29 12 preponderance of the evidence -- and I'll say that again,
10:03:33 13 the preponderance of the evidence -- as well as a second
10:03:37 14 burden of proof known as clear and convincing evidence --
10:03:41 15 and I'll say that again -- clear and convincing evidence.

10:03:46 16 When you're responding to lawyers' questions about
10:03:51 17 the burden of proof that I -- I need to instruct you that
10:03:54 18 when a party has the burden of proof on any claim or
10:03:57 19 defense by a preponderance of the evidence, it means that
10:04:03 20 the jury must be persuaded by the credible and believable
10:04:09 21 evidence that that claim or defense is more probably true
10:04:12 22 than not true. Let me say that again, more probably true
10:04:17 23 than not true. This is sometimes talked about as being the
10:04:22 24 greater weight and degree of credible testimony.

10:04:27 25 I think all of you can probably see in front of me

10:04:31 1 and in front of our court reporter, we have a statue in the
10:04:34 2 courtroom of the Lady of Justice.

10:04:36 3 She stands there blindfolded. In her right hand,
10:04:41 4 she holds lowered at her side the sword of justice. In her
10:04:45 5 left hand, she holds raised above her the scales of
10:04:49 6 justice. I'm sure all of you are familiar with the image
10:04:52 7 of the Lady of Justice.

10:04:54 8 Those scales that she holds in her left hand,
10:05:01 9 you'll notice, are exactly equal and balanced, and that's
10:05:05 10 where both of these parties should start out as when we
10:05:07 11 begin this trial, equal, balanced in all respects.

10:05:11 12 After you've heard the evidence in this case,
10:05:16 13 those of you that serve on the jury, I will give you
10:05:20 14 detailed instructions about the law that you're -- that you
10:05:24 15 are to apply, and then you're going to be given a list of
10:05:26 16 questions to answer.

10:05:27 17 This list of questions is called the verdict form.
10:05:29 18 And if a party has the burden of proof by a preponderance
10:05:34 19 of the evidence on any of those questions that are in the
10:05:36 20 verdict form, then that means if you are to -- and think
10:05:42 21 about it this way, ladies and gentlemen. If you were to
10:05:45 22 take all the evidence that's been presented in the trial,
10:05:48 23 and you put all the evidence the Plaintiffs put on one side
10:05:50 24 of the scales and all the evidence the Defendants presented
10:05:53 25 on the other side of the scales, if those scales tip one

10:05:57 1 way or the other, then that is the party who has prevailed
10:06:01 2 on the burden of proof.

10:06:03 3 If a party has the burden of proof by a
10:06:05 4 preponderance of the evidence and you consider all the
10:06:10 5 evidence placed on either side of the scales by the
10:06:13 6 respective parties and those scales tip in favor of the
10:06:16 7 party who has that burden of proof by a preponderance of
10:06:19 8 the evidence, even if they tip in that party's favor ever
10:06:23 9 so slightly, then that party has met its burden of proof by
10:06:27 10 a preponderance of the evidence.

10:06:31 11 On the other hand, when a party has the burden of
10:06:35 12 proof regarding any defense by clear and convincing
10:06:37 13 evidence, that second burden of proof that I mentioned to
10:06:42 14 you, that means that the jury must have an abiding
10:06:46 15 conviction that the truth of the party's factual
10:06:49 16 contentions are highly probable. Let me say that again, an
10:06:56 17 abiding conviction that the truth of the party's factual
10:06:59 18 contentions are highly probable.

10:07:02 19 This second standard, ladies and gentlemen, this
10:07:05 20 clear and convincing proof standard is a higher standard of
10:07:12 21 proof, a higher burden of proof than the preponderance of
10:07:15 22 the evidence standard.

10:07:15 23 If you imagine the same example, the Lady of
10:07:19 24 Justice who holds the scales in her left hand, they start
10:07:22 25 out equal and balanced. If over the course of the trial

10:07:25 1 the Plaintiffs' evidence goes on one side in your mind and
10:07:28 2 the Defendant's evidence goes on the other side of the
10:07:31 3 scales in your mind, then if a party who has the burden of
10:07:35 4 proof on any issue that the jury will decide by the
10:07:39 5 standard of clear and convincing evidence, if those scales
10:07:43 6 tip in that party's favor, and they must tip more than ever
10:07:47 7 so slightly, they must definitely tip in that party's
10:07:50 8 favor, then if they do, that party has met its burden of
10:07:55 9 proof by clear and convincing evidence.

10:07:56 10 Now, neither of these two burdens of proof that
10:08:03 11 I've just told you about should be confused with a third
10:08:06 12 and different burden of proof called beyond a reasonable
10:08:10 13 doubt. I'm sure you've all heard of beyond a reasonable
10:08:13 14 doubt in movies and television involving criminal cases.

10:08:19 15 Beyond a reasonable doubt has absolutely nothing
10:08:21 16 to do with a civil case such as this, and you should not
10:08:25 17 confuse beyond a reasonable doubt with the standard of
10:08:31 18 clear and convincing evidence.

10:08:33 19 Clear and convincing evidence is not as high a
10:08:36 20 standard as beyond a reasonable doubt, but it is a higher
10:08:40 21 standard of proof than the preponderance of the evidence.

10:08:43 22 Now, I give you these instructions, ladies and
10:08:46 23 gentlemen, in case some of the lawyers for either side asks
10:08:51 24 you about your ability to apply these two burdens of proof
10:08:55 25 fairly to the evidence that you might hear if you're

10:08:58 1 selected as a juror in this case.

10:09:01 2 Now, before I let the lawyers begin with their
10:09:05 3 questions of the jury, you will see, ladies and gentlemen,
10:09:09 4 either in written form or on the screens above you, nine
10:09:13 5 different questions that I'm going to ask each of you to
10:09:16 6 answer. This is the part of the process where I find out
10:09:19 7 from you the same kind of information I told you about me
10:09:23 8 at the beginning of the process.

10:09:25 9 Also, ladies and gentlemen, before we start this,
10:09:33 10 I want to talk with you briefly about how we're going to do
10:09:36 11 it.

10:09:37 12 We have two Court Security Officers here. They
10:09:41 13 will be among you in the gallery. They have two sanitized
10:09:46 14 handheld microphones. If you're asked a question -- and
10:09:50 15 we'll do it the same way on these nine questions you're
10:09:53 16 about to answer. When it's your turn, if you will take the
10:09:57 17 handheld microphone and if you will stand up, please, and
10:10:00 18 if you will pull your mask down and hold that microphone
10:10:03 19 where you can use it and answer those nine questions, it
10:10:07 20 will be very helpful.

10:10:09 21 It's a big courtroom, and because of social
10:10:11 22 distancing, we have people all the way against the back
10:10:18 23 wall in the courtroom. It's a long way, and it's important
10:10:21 24 that the lawyers and the Court be able to see you and hear
10:10:23 25 you answer these questions.

10:10:26 1 It's also important that I be able to see these
10:10:29 2 numbers that you have and the lawyers see the numbers that
10:10:31 3 you have so that we know exactly who answered which
10:10:34 4 questions which way.

10:10:35 5 These handheld microphones will be used in the
10:10:38 6 same way when we get to specific questions that are asked
10:10:42 7 of you by the lawyers when they address the panel. So
10:10:45 8 we'll do it the same way for these nine questions you're
10:10:48 9 about to answer as when we get to the specific questions
10:10:52 10 the lawyers will ask you.

10:10:53 11 We have two of these microphones, and our Court
10:10:57 12 Security Officers will wipe them down with sanitizing
10:11:00 13 cloths and sanitize each one after it's used so that nobody
10:11:03 14 is going to be handed a handheld microphone that's not been
10:11:07 15 disinfected before it gets to you.

10:11:09 16 But when you're asked specific questions by the
10:11:12 17 lawyers in the case, if you'll do it in just the same way.
10:11:16 18 If you'll stand, if you'll lower your mask, if you'll use
10:11:19 19 the handheld microphone, answer the question, pass the
10:11:22 20 microphone back to the Court Security Officer, raise your
10:11:24 21 mask back up, and have a seat, that will be the way we'll
10:11:27 22 do it both now and when the lawyers ask you the questions
10:11:30 23 in a minute.

10:11:30 24 All right. We'll begin with the nine questions
10:11:36 25 you have before you. And as soon as our Court Security

10:11:41 1 Officers get back into the gallery, we'll begin with Panel
10:11:46 2 Member No. 1, all the way against the wall on the left, and
10:11:49 3 that's Mr. Young, I believe.

10:11:53 4 And let me ask everybody to hold the microphones
10:12:02 5 close. I have a lot of jurors -- or prospective jurors who
10:12:06 6 show up, and the microphone is in the middle of the chest
10:12:09 7 or it's down at your belt. It won't -- it won't help us if
10:12:12 8 it's that far away from your mouth. You need to keep it up
10:12:15 9 close. Please go ahead.

10:12:15 10 JUROR YOUNG: How is this?

10:12:17 11 THE COURT: That's great.

10:12:18 12 JUROR YOUNG: How about that?

10:12:19 13 THE COURT: Go ahead -- go ahead, Mr. Young. Go
10:12:22 14 ahead, please.

10:12:22 15 JUROR YOUNG: All right. My name is Roger Young.
10:12:24 16 I'm from Queen City, Texas. I have two full-grown kids
10:12:28 17 that are out of the house.

10:12:29 18 I work out at Red River for a contractor called
10:12:33 19 Amentum. I've been out there since 2008.

10:12:38 20 Just a high school graduate.

10:12:40 21 I'm divorced. And --

10:12:47 22 THE COURT: What about prior --

10:12:48 23 JUROR YOUNG: I was -- I was a juror several years
10:12:50 24 ago. It ended up in a mistrial.

10:12:52 25 THE COURT: Was that a civil case or a criminal

10:12:54 1 case?

10:12:55 2 JUROR YOUNG: Civil case.

10:12:57 3 THE COURT: Civil case. And where was that, sir?

10:13:00 4 JUROR YOUNG: New Boston.

10:13:01 5 THE COURT: All right. In state court?

10:13:03 6 JUROR YOUNG: Yes.

10:13:04 7 THE COURT: Thank you very much, Mr. Young.

10:13:05 8 Please have a seat.

10:13:06 9 Next is No. 2, Ms. Blum.

10:13:10 10 JUROR BLUM: My name is Kassie Blum. I live in
10:13:14 11 Naples. I have no kids. I work as a host at Silver Star
10:13:19 12 in Texarkana. I've worked there since February of 2020.

10:13:24 13 I graduated high school. I'm currently in
10:13:27 14 college.

10:13:29 15 And I have not served on a jury before.

10:13:32 16 THE COURT: Tell us what Silver Star is briefly.

10:13:38 17 JUROR BLUM: It's a smokehouse, and we serve
10:13:41 18 barbecue and steak.

10:13:44 19 THE COURT: And where are you in college, ma'am?

10:13:46 20 JUROR BLUM: Texarkana College for nursing.

10:13:48 21 THE COURT: All right. Thank you very much.

10:13:48 22 Please have a seat.

10:13:49 23 Next is No. 3, Ms. Alexander.

10:13:52 24 JUROR ALEXANDER: My name is Jami Alexander. I
10:13:55 25 live in Marshall, Texas. I have two children, one grown,

10:13:59 1 one still at home. I -- I work from home as a customer
10:14:02 2 service representative for a company called
10:14:05 3 Teleperformance. I take phone calls for various companies
10:14:10 4 that hire my company to do so. I've worked there for a
10:14:13 5 year. I've worked from home doing various work like that
10:14:16 6 for eight years.

10:14:17 7 I have a Bachelor's degree in psychology from
10:14:21 8 Texas A&M Commerce that I received in 2011.

10:14:25 9 I am recently married. My husband's name is Ken
10:14:32 10 Alexander. He drives a cement truck for a living, and he's
10:14:35 11 done that for eight years here in Marshall.

10:14:37 12 And I've never served on a jury.

10:14:38 13 THE COURT: And who does your husband work for
10:14:41 14 driving a cement truck?

10:14:41 15 JUROR ALEXANDER: He works for Martin Marietta
10:14:44 16 Materials here in Marshall.

10:14:44 17 THE COURT: Thank you, ma'am. Please have a seat.

10:14:46 18 Next is No. 4. That's Ms. Cannon.

10:14:50 19 JUROR CANNON: Good morning. I'm Debbie Cannon.
10:14:53 20 I currently reside in Gilmer, Texas. I have two adult
10:14:57 21 children. I have worked for over 30 years as a high school
10:15:02 22 math teacher. I've retired, but been recalled at least
10:15:08 23 four times, and I'm waiting to see what's going to occur in
10:15:11 24 the next week or so.

10:15:14 25 Along with that, I have sat -- I do private

10:15:17 1 sitting with a friend who is a stroke victim and has acute
10:15:23 2 COPD. I've worked for her about three years, and I just
10:15:28 3 work part time. And currently I work about three nights a
10:15:31 4 week.

10:15:31 5 I have a mathematics degree from the University of
10:15:35 6 Texas at Tyler.

10:15:37 7 My husband's name was Billy Cannon, and he is
10:15:41 8 deceased. He previously worked for Lone Star Steel in the
10:15:45 9 open hearth and for Kelly Moore paint as an inside sales.
10:15:51 10 He worked for those 11 and 12 years.

10:15:56 11 And I have previously served on a crim -- on a
10:15:59 12 civil case in Upshur County.

10:16:02 13 THE COURT: How long ago was that, Ms. Cannon, the
10:16:05 14 civil case?

10:16:06 15 JUROR CANNON: I would think 20 years ago.

10:16:09 16 THE COURT: Long time?

10:16:11 17 JUROR CANNON: Well, it was before the new
10:16:14 18 courthouse -- the new justice center was built. So it was
10:16:19 19 in the old court.

10:16:20 20 THE COURT: Thank you, ma'am. All right. Please
10:16:22 21 have a seat.

10:16:22 22 Next is Panel Member No. 5, Ms. Folsom.

10:16:26 23 JUROR FOLSOM: My name is Andrea Deornellis. I do
10:16:32 24 not have any kids, but I am pregnant. I'm employed at
10:16:36 25 Texas Heritage National Bank as a teller. I have worked

10:16:41 1 there for three months now.

10:16:43 2 I'm a high school graduate.

10:16:46 3 My spouse's name is Dalton Deornellis. He's
10:16:50 4 employed at Top Hat as a welder. He actually started there
10:16:57 5 two weeks ago.

10:16:58 6 And I have not served on a jury before.

10:17:02 7 THE COURT: Thank you very much, ma'am. Sorry I
10:17:02 8 didn't have your maiden name -- married name written down.

10:17:03 9 No. 6 is next. Ms. Newsom.

10:17:05 10 JUROR NEWSOM: My name is Denise Newsom. I live
10:17:09 11 in Daingerfield, have three grown children. I am retired
10:17:14 12 from the Daingerfield/Lone Star ISD. I worked there 34
10:17:19 13 years, 15 as a clerical and instructional aide, grades
10:17:24 14 three through five, and the last 19 as an instructional
10:17:32 15 aide in a special ed resource room for grades kindergarten
10:17:38 16 through second. Total years worked, 34. I've been retired
10:17:42 17 since 2013.

10:17:45 18 I graduated from high school, have some college.
10:17:49 19 My husband's name is Danny Joe Newsom. He worked for T&N
10:17:56 20 Railroad in Lone Star for 49 years.

10:18:01 21 And I have not served on a jury before.

10:18:05 22 THE COURT: Thank you very much, ma'am.

10:18:07 23 Next is Panel Member No. 7, Mr. Jones.

10:18:13 24 JUROR RICKY JONES: My name is Ricky Jones. I
10:18:16 25 live in Douglasville, Texas, Cass County. I have two grown

10:18:20 1 children. I retired early from AT&T. I was a manager of
10:18:25 2 engineering and network services for 26 years.

10:18:28 3 I have -- a high school graduate.

10:18:30 4 My wife's name is Martha Jones, and she retired
10:18:34 5 from Regions Bank as a teller.

10:18:36 6 And I have no prior jury service.

10:18:38 7 THE COURT: Thank you, sir. Please have a seat.

10:18:39 8 And we'll go next to Panel Member No. 8,
10:18:43 9 Mr. Bailey.

10:18:44 10 JUROR BAILEY: My name is Logan Bailey. I live in
10:18:47 11 Hallsville, Texas. I don't have any kids. I work at
10:18:51 12 Peters Chevrolet as a sales consultant. I've been there
10:18:55 13 three weeks.

10:18:56 14 I have a Bachelor's degree in sociology from
10:18:59 15 Louisiana Tech University.

10:19:02 16 I am not married.

10:19:03 17 And I've never served on a jury.

10:19:05 18 THE COURT: Thank you very much, sir, if you'll
10:19:08 19 have a seat.

10:19:09 20 We'll go to Panel Member No. 9 next, Ms. McKnight.

10:19:13 21 JUROR MCKNIGHT: My name is Amanda McKnight. I
10:19:15 22 live in Avinger. I have one seven-year-old son. I work
10:19:19 23 for First National Bank of Hughes Springs as a teller.
10:19:22 24 I've been there for 12 years.

10:19:26 25 I have a high school education.

10:19:27 1 My husband's name is Harris McKnight. He works
10:19:31 2 for EMC Water as a water operator. He's been there, I
10:19:35 3 think, about 10 years.

10:19:36 4 And I've never served on a jury.

10:19:38 5 THE COURT: All right, ma'am. Thank you very
10:19:39 6 much.

10:19:39 7 Next is Panel Member No. 10, Mr. Snyder.

10:19:43 8 JUROR SNYDER: My name is Kevin Snyder. I live in
10:19:46 9 Longview, Texas. I have five kids, two still at home. I'm
10:19:50 10 employed by LeTourneau University. I've been there for 20
10:19:55 11 years, and I work in the information technology department.

10:19:59 12 I have a high school diploma and two years of
10:20:01 13 college.

10:20:02 14 My wife is named Debbie Snyder. She is a
10:20:05 15 secondary education teacher, taught for five years but now
10:20:09 16 is a homeschool teacher extraordinaire.

10:20:12 17 And I did serve in a criminal trial for sentencing
10:20:17 18 here in Marshall, probably 12 to 13 years ago.

10:20:20 19 THE COURT: Do you remember which court that was
10:20:22 20 in?

10:20:24 21 JUROR SNYDER: I do not. Across the street.

10:20:25 22 THE COURT: All right. Thank you very much, sir.

10:20:28 23 Next is No. 11, Ms. Harley.

10:20:32 24 JUROR HARLEY: My name is Donna Harley. I live in
10:20:36 25 Hallsville, Texas. I have three grown sons, one at home.

10:20:40 1 I am a retired nurse as of two years ago. I worked at
10:20:46 2 Diagnostic Clinic for Dr. Clark and Dr. Bianca. The last
10:20:52 3 13 of that was at Hallsville Independent School District as
10:20:55 4 a school nurse.

10:20:56 5 I am a graduate of Kilgore College.

10:21:00 6 My husband's name is Troy Harley. He works for
10:21:07 7 XTO Energy, 20-plus years. I have never worked -- never
10:21:12 8 served on a jury.

10:21:13 9 THE COURT: What does your husband do for XTO?

10:21:16 10 JUROR HARLEY: He is a mechanical field
10:21:19 11 supervisor.

10:21:20 12 THE COURT: Thank you very much, ma'am.

10:21:22 13 No. 12 is next. Mr. Williams.

10:21:24 14 JUROR WILLIAMS: David Williams is my name. I
10:21:27 15 live over in Union Grove. I have one daughter. She just
10:21:32 16 graduated college as a dentist. She's going to Memphis for
10:21:38 17 her orthodontics, started her residency this week.

10:21:42 18 Place of employment, I've been self-employed for
10:21:45 19 30 years, got a small construction company.

10:21:50 20 High school education.

10:21:52 21 My spouse's name is Sherry Williams. Her place of
10:21:57 22 employment is at ABC Supply. She's been there 30 years.
10:22:04 23 She's sales -- inside sales manager is what she is.

10:22:07 24 There was -- once there was a jury. I didn't get
10:22:12 25 selected.

10:22:12 1 THE COURT: So you've never actually served as a
10:22:15 2 juror?

10:22:15 3 JUROR WILLIAMS: Yes.

10:22:16 4 THE COURT: Thank you, sir.

10:22:17 5 JUROR WILLIAMS: All right.

10:22:18 6 THE COURT: All right. Next will be No. 13 on our
10:22:21 7 panel, Ms. Feltner.

10:22:23 8 JUROR WILLIAMS: My name is Shelley Feltner. I
10:22:26 9 live here in Marshall, Texas. I have one grown child, a
10:22:30 10 daughter. I work for Jefferson Independent School
10:22:37 11 District. I'm a third grade teacher. I've worked
10:22:40 12 there for -- I'll be starting my 28th year.

10:22:42 13 I have a Bachelor's degree from University of
10:22:45 14 Texas at Tyler.

10:22:46 15 My husband's name is Bruce Feltner. He's retired.
10:22:49 16 He was a truck driver for 35 years and worked for various
10:22:52 17 trucking companies.

10:22:55 18 And I served on a jury 15 or 20 years ago. I
10:23:03 19 think it was a criminal, but I don't -- I don't remember
10:23:06 20 what it was about or --

10:23:07 21 THE COURT: Where did it take place, Ms. Feltner?

10:23:10 22 JUROR FELTNER: Over here at the other courthouse
10:23:12 23 over here.

10:23:12 24 THE COURT: Harrison County Courthouse?

10:23:15 25 JUROR FELTNER: Yeah, I think it was a criminal

10:23:16 1 case, but --

10:23:16 2 THE COURT: It's been a long time ago.

10:23:19 3 JUROR FELTNER: Many years, yes.

10:23:21 4 THE COURT: Thank you, ma'am.

10:23:22 5 Next is No. 14, Mr. Achterhof -- Ms. Achterhof,
10:23:28 6 I'm sorry.

10:23:29 7 JUROR ACHTERHOF: My name is Donna Achterhof. I
10:23:31 8 have two grown sons. I work at Christus Good Shepherd in
10:23:35 9 Longview as a medical secretary. I've worked there for 11
10:23:38 10 years.

10:23:39 11 I have a high school education.

10:23:41 12 My husband's name is Bruce. He works for East
10:23:44 13 Texas Support Services as a handicap van driver. He's
10:23:47 14 worked there for two years.

10:23:48 15 And I was on a criminal case about 10 years ago in
10:23:51 16 Jefferson.

10:23:52 17 THE COURT: All right, ma'am. Thank you very
10:23:54 18 much.

10:23:54 19 Next is No. 15, Ms. Brian.

10:23:58 20 JUROR BRIAN: My name is Kristie Brian. I live in
10:24:05 21 Diana, Texas. I have two children, 26 and 12. I -- I
10:24:10 22 actually recently retired from Longview Police Department
10:24:13 23 as a spokesperson for about 10 years. Worked there for
10:24:17 24 another about seven before that -- before I became the
10:24:21 25 spokesperson. I retired and opened a Farmers's Insurance

10:24:26 1 agency. So I'm the owner of that agency now since March
10:24:30 2 the 2nd.

10:24:32 3 I have a Bachelor's degree from UT Tyler.

10:24:34 4 My spouse's name is Robert Brian and he is a
10:24:39 5 police officer for Longview PD also, where I still reserve,
10:24:42 6 too, but he's a police officer, and he works at the school
10:24:45 7 as a school resource officer. He's been a police officer
10:24:48 8 for over 20 years.

10:24:49 9 And I have been called for jury service a couple
10:24:51 10 of times but never gotten picked.

10:24:53 11 THE COURT: And which school does your husband
10:24:56 12 work at as a security?

10:24:57 13 JUROR BRIAN: For Foster Middle School in
10:25:01 14 Longview.

10:25:01 15 THE COURT: Thank you, ma'am.

10:25:02 16 All right. Next is Mr. Huddleston.

10:25:07 17 JUROR HUDDLESTON: My name is Dakota Huddleston.
10:25:09 18 I'm from Atlanta, Texas. I have three kids. I'm a captain
10:25:15 19 with the Texarkana Texas Fire Department, and I also own
10:25:16 20 and operate a small lawn care business. I've been at the
10:25:20 21 fire department for 12 years.

10:25:22 22 Have a high school diploma, some college in fire
10:25:25 23 academy.

10:25:25 24 My wife's name is Kirby. She's a bookkeeper for
10:25:30 25 Spring Creek Enterprise. She's been there I guess about 10

10:25:32 1 years.

10:25:33 2 And I've been summonsed to jury duty but never
10:25:37 3 been picked to serve.

10:25:39 4 THE COURT: Tell us what Spring Creek Enterprise
10:25:41 5 is.

10:25:41 6 JUROR HUDDLESTON: It's a business that my
10:25:42 7 brother-in-law has, and he does -- he manages the woodyard
10:25:46 8 for International Paper, or Graphic Packaging now, in
10:25:49 9 Domino.

10:25:49 10 THE COURT: Okay, sir. Thank you very much.

10:25:52 11 Next is No. 17, Mr. Gonzalez.

10:25:55 12 JUROR GONZALEZ: Hello, my name is Robert Paul
10:26:04 13 Gonzalez. I'm from Big Sandy, Texas, in Upshur.

10:26:08 14 I do not have any children or spouse.

10:26:10 15 I don't have one of those either.

10:26:13 16 I'm a grocery clerk at Brookshire Grocery Company,
10:26:18 17 their store in Hawkins. It's what, Wood County? Yeah,
10:26:23 18 Wood County.

10:26:24 19 THE COURT: What about your education?

10:26:26 20 JUROR GONZALEZ: I've got an associate's degree in
10:26:31 21 mathematics from Tyler Junior College, qualified for a
10:26:35 22 business administration degree from the same but just don't
10:26:37 23 have the actual degree for it. I've also completed some
10:26:41 24 classes at UT Tyler towards accounting. I've actually done
10:26:45 25 a business law class and the business ethics class that's

10:26:48 1 been required since the Enron ordeal.

10:26:51 2 THE COURT: Any prior jury service, sir?

10:26:54 3 JUROR GONZALEZ: I've been called but never --
10:26:56 4 never chosen.

10:26:57 5 THE COURT: Never selected. Thank you very much.

10:26:58 6 Next is -- next is No. 18, Ms. Scott.

10:27:05 7 JUROR SCOTT: My name is Quintisha Scott. I'm
10:27:09 8 from Linden, Texas. I have one child, a son 14. I work
10:27:13 9 for Linden-Kildare ISD, for 16 years.

10:27:18 10 Graduated from high school, two years of college.

10:27:20 11 My spouse's name is Leonard Williams. He's a
10:27:24 12 logger. He's been doing that for the past 20-something
10:27:28 13 years.

10:27:29 14 No for number nine.

10:27:30 15 THE COURT: You've never had any jury service,
10:27:32 16 ma'am?

10:27:33 17 JUROR SCOTT: No, I always get out.

10:27:36 18 THE COURT: Okay. All right.

10:27:39 19 JUROR SCOTT: Today -- sorry.

10:27:40 20 THE COURT: Next is No. 19 on the panel.

10:27:43 21 Mr. Furlow.

10:27:44 22 JUROR FURLOW: My name is Josh Furlow. I live in
10:27:47 23 Diana. I have three kids, 11, 9, and 7. I work at Ore
10:27:52 24 City. I'm a teacher and coach there. I've worked there --
10:27:54 25 it's my second year there, 21st overall in education.

10:27:57 1 I got a Bachelor of Behavioral Science at
10:27:57 2 Hardin-Simmons in Abilene.

10:28:02 3 My spouse's name is Julie. She's also a teacher
10:28:05 4 and coach at Ore City. This will be her second year --
10:28:08 5 second year there, as well.

10:28:09 6 And I've never served on a jury.

10:28:10 7 THE COURT: All right, sir. Thank you very much.
10:28:13 8 If you'll have a seat.

10:28:14 9 Next is Panel Member No. 20, Mr. Doss.

10:28:17 10 JUROR DOSS: My name is Devonte Doss. I live in
10:28:23 11 Gilmer, Texas. No children. I currently work at Hilton
10:28:26 12 Garden Inn & Conference Center in Longview as a guest
10:28:28 13 service agent. I've been there since November of last
10:28:30 14 year.

10:28:31 15 THE COURT: Mr. Doss, would you slow down just a
10:28:34 16 little?

10:28:35 17 JUROR DOSS: Sorry. I'm currently in college at
10:28:37 18 Tyler Junior College.

10:28:39 19 No spouse.

10:28:40 20 And I've never been -- no jury service.

10:28:43 21 THE COURT: All right, sir. Thank you very much.

10:28:44 22 Next is No. 21, Mr. Powell.

10:28:47 23 JUROR POWELL: Hi. My name is Christopher Powell.
10:28:54 24 I live in Jefferson -- I have no kids.

10:28:57 25 THE COURT: Mr. Powell, could you pull that mask

10:28:59 1 down so I can hear you better? Thank you.

10:29:01 2 JUROR POWELL: I work for the First National Bank
10:29:03 3 of Hughes Springs. I guess compliance officer would be the
10:29:08 4 best -- I've worked there for eight years. I got a
10:29:14 5 Bachelor's degree from ETBU.

10:29:18 6 No spouse.

10:29:19 7 And I've had grand jury selection twice for Marion
10:29:26 8 County, and I've been on two criminal cases in Marion
10:29:29 9 County.

10:29:29 10 THE COURT: And how long ago were you on those
10:29:31 11 criminal cases?

10:29:32 12 JUROR POWELL: All of that was in the last five
10:29:34 13 years.

10:29:34 14 THE COURT: All right, sir. Thank you very much.
10:29:35 15 Next is Panel Member No. 22, Ms. Berry.

10:29:41 16 JUROR BERRY: My name is Becky Berry. I am not
10:29:44 17 married, with no children.

10:29:45 18 I currently work for Texas Bank & Trust in
10:29:48 19 marketing. I've been there two years this week, so it's
10:29:52 20 almost my anniversary.

10:29:53 21 Graduated from Texas A&M with a Master's degree.

10:29:56 22 And I have served on a jury, but it was probably
10:29:59 23 20 years ago, and it was in Harrison County.

10:30:02 24 THE COURT: And are you based in Longview with
10:30:03 25 Texas Bank & Trust or another location?

10:30:06 1 JUROR BERRY: Longview, yes, sir.

10:30:08 2 THE COURT: And what was your Master's degree in?

10:30:10 3 JUROR BERRY: Agricultural economics.

10:30:12 4 THE COURT: Okay. Thank you very much, ma'am.

10:30:14 5 Next is No. 23, Ms. Evans.

10:30:17 6 JUROR EVANS: My name is Donna Evans. I have one
10:30:22 7 grown son. I am -- I'm retired from Centerpoint Energy. I
10:30:29 8 was a service technician there for 22 years.

10:30:34 9 I am unmarried.

10:30:36 10 And I have served on a criminal case in Harrison
10:30:42 11 County. It was Judge Bonnie Leggat's court, and that was
10:30:46 12 like 30 years ago.

10:30:47 13 THE COURT: Yes, ma'am. Thank you very much.

10:30:50 14 JUROR EVANS: Thank you.

10:30:50 15 THE COURT: Next is No. 24, Ms. Haggard.

10:30:54 16 JUROR HAGGARD: My name is Carla Haggard. I live
10:31:01 17 in Jefferson. I have two grown children, one of my own and
10:31:05 18 one stepson I raised. I worked in banking many years, and
10:31:10 19 then my last place that I worked was Good Shepherd Hospital
10:31:13 20 in the accounting department. I was there five years.

10:31:16 21 I have 60 hours of college credit.

10:31:20 22 My husband is Charles Haggard. His last place of
10:31:24 23 employment was also at Good Shepherd. He worked in the
10:31:27 24 warehouse. But he owned his business most of his career.
10:31:31 25 He was there about six months.

10:31:33 1 And I have served on a jury before. It's been
10:31:36 2 about 20 years. And I don't remember, I think there was
10:31:39 3 one criminal, but the rest were civil. And that was in
10:31:42 4 Jefferson.

10:31:43 5 THE COURT: Yes, ma'am. You said your husband had
10:31:44 6 a business of his own. Tell me about that.

10:31:47 7 JUROR HAGGARD: He did. He -- he had an auto
10:31:50 8 repair business, and then he went into -- he did a career
10:31:54 9 change. He sold investments and insurance. And then the
10:31:57 10 last job he had was in the oilfield supply business. He
10:32:00 11 was their purchaser, and he was laid off in 2015. And he
10:32:04 12 went to work in the warehouse in Good Shepherd.

10:32:08 13 THE COURT: All right, ma'am. Thank you very
10:32:10 14 much.

10:32:10 15 Next is No. 25, Ms. Wilson.

10:32:13 16 JUROR NATALIE WILSON: My name is Natalie Wilson.
10:32:16 17 I live here in Marshall. I have no children. I'm not
10:32:19 18 employed at the moment. Educational background is high
10:32:22 19 school. And I have not served before.

10:32:24 20 THE COURT: All right. Thank you very much.
10:32:29 21 That's No. 25.

10:32:29 22 Next is No. 26, Ms. Swierk.

10:32:33 23 JUROR SWIERK: Hi. My name is Debra Swierk. I
10:32:38 24 have four grown sons. Retired from Texas Home Health
10:32:41 25 since -- well, 2019. I've worked there for I guess eight

10:32:48 1 years.

10:32:48 2 I have a GED.

10:32:51 3 Been divorced since 1986.

10:32:53 4 And never served.

10:32:54 5 THE COURT: All right. Thank you very much,

10:32:57 6 ma'am.

10:32:57 7 Next is Mr. Beasley, No. 27.

10:33:01 8 JUROR BEASLEY: My name is Kevin Beasley. Excuse

10:33:06 9 me. I live in Diana, Texas. I have three kids between the

10:33:13 10 ages of 21 and 18. I'm self-employed, have been for 16

10:33:20 11 years. I've worked in various aspects of construction,

10:33:23 12 including excavation. And I do most of my work as tile,

10:33:27 13 wood, and stone, and mainly showers in new construction.

10:33:32 14 I've graduated from Texas State Technical College

10:33:38 15 with a degree in computer control systems and robotics and

10:33:42 16 instrumentation.

10:33:43 17 My wife's name is Cindy Kay, and she works at

10:33:47 18 Northeast Texas Community College in Mt. Pleasant as an

10:33:51 19 upward bound coordinator and counselor. And she's been

10:33:54 20 doing that for seven years.

10:33:56 21 And I've never served on a jury before.

10:33:58 22 THE COURT: Thank you very much, sir. If you'll

10:34:00 23 have a seat.

10:34:01 24 We'll next go to No. 28, and that is Mr. Suess.

10:34:06 25 JUROR SUESS: It's actually Suess.

10:34:10 1 THE COURT: Suess.

10:34:11 2 JUROR SUESS: No one ever gets it right.

10:34:13 3 THE COURT: I'll get it right from now on. I'm
10:34:15 4 used to having mine -- I'm used to having mine
10:34:19 5 mispronounced, too, so I'm sensitive.

10:34:21 6 JUROR SUESS: I'm sure.

10:34:21 7 THE COURT: Go ahead.

10:34:22 8 JUROR SUESS: So my name is Tom Suess -- Thomas,
10:34:25 9 given name. I don't have any biological children, but I
10:34:30 10 have three great stepkids -- or two great ones, one
10:34:30 11 challenging, I guess.

10:34:32 12 I work for Community Healthcore. I'm a facilities
10:34:35 13 manager. Community Healthcore is a behavioral health unit
10:34:40 14 of local government so we provide substance abuse services,
10:34:42 15 mental health services, and services to people with
10:34:46 16 disabilities. Worked there for about 12 years, and I'm
10:34:49 17 responsible for about 32 facilities in -- in all of East
10:34:52 18 Texas.

10:34:53 19 I have a Bachelor's degree in psychology. Been
10:34:58 20 working on my Master's off and on for a few years -- when I
10:35:01 21 get time and money, so...

10:35:04 22 Spouse's name is Jackie Suess. She's a licensed
10:35:09 23 vocational nurse. She's works at Whispering Pines in
10:35:14 24 Longview. She's worked there about a year and several
10:35:16 25 nursing homes over the years in the area.

10:35:17 1 I have served on, I believe, two criminal juries
10:35:21 2 in Denton County, a criminal jury here about four or five
10:35:26 3 years ago. And in this court actually a couple years
10:35:29 4 ago -- two to three years ago, I believe.

10:35:32 5 THE COURT: All right, sir. Thank you very much.
10:35:34 6 Next we'll go to Panel Member No. 29, Mr. Ramsey.

10:35:41 7 JUROR RAMSEY: My name is Athan Ramsey. I've
10:35:47 8 lived in Avinger, Texas, for the last 15 years. Have one
10:35:47 9 grown child. Work for Crosby Lebus, manufacturing heavy
10:35:52 10 lifting accessories.

10:35:55 11 High school education.

10:35:58 12 My wife works at ABC Auto. She's a driver. She's
10:36:01 13 been there eight years. Her name is Lisa. And I have no
10:36:05 14 prior selections.

10:36:07 15 THE COURT: Never served on a jury?

10:36:09 16 JUROR RAMSEY: No, sir.

10:36:11 17 THE COURT: Thank you very much, sir. That
10:36:12 18 completes No. 29.

10:36:13 19 We'll go to No. 30, Ms. Gothard.

10:36:16 20 JUROR GOTHARD: My name is Teresa Gothard. I have
10:36:19 21 three grown children, all of which are married. I have
10:36:23 22 seven grandsons. I am currently retired as a registered
10:36:26 23 nurse since 2017. Prior to retirement, I worked for 20
10:36:34 24 years at Good Shepherd Medical Center as a mother/baby
10:36:40 25 nurse.

10:36:41 1 Divorced. And I have -- oh, I live in Big Sandy,
10:36:44 2 by the way.

10:36:45 3 And I've never served on a case.

10:36:47 4 THE COURT: All right, ma'am. Thank you very
10:36:49 5 much.

10:36:49 6 Next is No. 31, Mr. Wilson.

10:36:53 7 JUROR GARY WILSON: I'm Gary Wilson. Live in
10:36:55 8 Linden. Got two grown children, and two step -- grown
10:36:59 9 stepchildren. I'm retired from AEP SWEPCO. Served 36
10:37:03 10 years, three months. In that time, I also served as an
10:37:10 11 elected officer of the union for 22 years. And I also
10:37:14 12 served on our negotiating team for our contracts during
10:37:17 13 that period.

10:37:19 14 I graduated high school from Linden.

10:37:23 15 I'm married to Debra Wilson. My wife's retired
10:37:27 16 from Hallsville Independent School District. She retired
10:37:30 17 as a special education supervisor there after about 28
10:37:34 18 years.

10:37:34 19 And I served as an alternate juror one time on a
10:37:40 20 DUI case in Cass County.

10:37:41 21 THE COURT: How long ago was that, sir?

10:37:44 22 JUROR GARY WILSON: Probably 25 or 30 years ago.

10:37:46 23 THE COURT: Okay. And you mentioned a union. I
10:37:49 24 assume it's IBEW?

10:37:52 25 JUROR GARY WILSON: Yes, sir.

10:37:52 1 THE COURT: Thank you, Mr. Wilson.

10:37:53 2 Next is No. 32, Ms. Jones.

10:37:56 3 JUROR LADONNA JONES: I am LaDonna Jones. I work
10:37:58 4 for Harrison County. I have three grown children. I've
10:38:01 5 been at the county for almost 35 years.

10:38:04 6 I have a Bachelor of Science degree in business.

10:38:07 7 I'm married to Ronald, who works for Rushing Pest
10:38:11 8 Control out of Atlanta.

10:38:13 9 And I have served on one felony jury over 20 years
10:38:17 10 ago and two JP juries over 10 years ago.

10:38:21 11 THE COURT: All those in Harrison County?

10:38:26 12 JUROR LADONNA JONES: Yes.

10:38:27 13 THE COURT: Thank you, Ms. Jones.

10:38:28 14 Next is No. 33, Mr. Judd.

10:38:32 15 JUROR JUDD: My name is Mike Judd. I live in
10:38:35 16 Gilmer, Texas. I've got two kids, one in college, one in
10:38:39 17 high school. I have a landscaping maintenance business in
10:38:39 18 Longview that I've had for 22 years.

10:38:42 19 I have a high school diploma and two years of
10:38:45 20 college.

10:38:46 21 My wife's name is Carrie Judd. She works at UT
10:38:52 22 Tyler as a nursing instructor. She's been there eight
10:38:55 23 months. Before that she was a nurse practitioner at
10:39:00 24 Longview Internal Medicine.

10:39:02 25 I served on the grand jury in Upshur County

10:39:07 1 probably five years ago.

10:39:08 2 THE COURT: Have you ever served on a petit jury
10:39:11 3 in a civil case?

10:39:11 4 JUROR JUDD: No, sir.

10:39:12 5 THE COURT: Okay. Thank you, Mr. Judd.

10:39:13 6 Next is No. 34, Mr. Trudeau.

10:39:17 7 JUROR TRUDEAU: My name is Robert Trudeau. And I
10:39:20 8 live in Linden -- Linden, Texas. I have no children. I
10:39:25 9 currently work at Walmart as a sales associate. I've been
10:39:28 10 there for six and almost a half years at this point.

10:39:32 11 I have a high school diploma.

10:39:35 12 I have no spouse.

10:39:37 13 And no prior jury service.

10:39:38 14 THE COURT: And the Walmart you work at is in
10:39:40 15 Linden?

10:39:41 16 JUROR TRUDEAU: It's in Atlanta, Texas.

10:39:42 17 THE COURT: Atlanta. Thank you, sir. That will
10:39:45 18 complete No. 34.

10:39:47 19 And next is No. 35, Mr. Carl.

10:39:51 20 JUROR CARL: My name is Spencer Carl. I have no
10:39:56 21 kids. I did not graduate high school. I cook barbecue for
10:40:02 22 a living at Stanley's Pit Barbecue in Tyler. And I have
10:40:07 23 never been on a jury or chosen.

10:40:10 24 THE COURT: Thank you, sir.

10:40:15 25 Next is No. 36, Ms. Woods.

10:40:18 1 JUROR WOODS: My name is LaDonna Woods. I live
10:40:21 2 here in Marshall, Texas. I have two grown children. I
10:40:26 3 work for 1 Call Staffing as the officer manager and
10:40:31 4 contract specialist. I've worked there almost four years.

10:40:35 5 I have a Bachelor's degree in business from ETBU.

10:40:39 6 My husband is Don Woods, and he owns his own
10:40:43 7 business, Don Woods Electrical service here in Marshall.
10:40:46 8 He's owned it forever.

10:40:51 9 And I have had the honor of serving on both civil
10:40:54 10 and criminal cases, but it's been a number of years ago.

10:40:57 11 THE COURT: And tell me where those were, please,
10:40:59 12 Ms. Wood.

10:41:00 13 JUROR WOODS: Both were here in Marshall in
10:41:03 14 Harrison County Court and here in the federal.

10:41:06 15 THE COURT: And how long has it been since you
10:41:08 16 served as a juror in this court?

10:41:13 17 JUROR WOODS: It was the early 2000s.

10:41:15 18 THE COURT: And it was a civil case?

10:41:17 19 JUROR WOODS: Yes.

10:41:17 20 THE COURT: Okay. Do you remember anything about
10:41:20 21 what the case was about?

10:41:22 22 JUROR WOODS: It had to do with a franchise
10:41:28 23 dealership.

10:41:28 24 THE COURT: Okay. All right. Thank you very
10:41:31 25 much, Ms. Woods.

10:41:34 1 Next is No. 37, Ms. Hood.

10:41:37 2 JUROR HOOD: My name is Madison Hood. I live here
10:41:40 3 in Marshall, Texas. I have three kids all under the age of
10:41:44 4 seven. I'm the first assistant at the Harrison County
10:41:48 5 District Attorney's Office, and I also do some municipal
10:41:51 6 work for Marshall, Hallsville, Gladewater, and sometimes
10:41:54 7 Big Sandy. I've worked at this DA's office for almost two
10:41:58 8 years. Prior to that I was at Gregg County.

10:42:01 9 I went to the University of Texas at Austin and
10:42:05 10 then I went to South Texas College of Law.

10:42:06 11 My husband is Jared Hood. He's the baseball coach
10:42:09 12 at East Texas Baptist University. He's been there almost
10:42:14 13 nine years.

10:42:14 14 And I have never been on a jury.

10:42:16 15 THE COURT: Thank you very much.

10:42:17 16 Next is No. 38, Mr. Smith.

10:42:21 17 JUROR SMITH: Billy Smith. Live in Marshall. I
10:42:25 18 have one six-year-old son. I work at Railserve in
10:42:29 19 Longview. We do railcar switching. Worked there for about
10:42:32 20 a year.

10:42:38 21 High school diploma and some college.

10:42:40 22 Married, Marissa Smith. She's the chemistry
10:42:44 23 department chair and professor at East Texas Baptist.
10:42:49 24 She's worked there for five years.

10:42:50 25 And never served on a jury.

10:42:51 1 THE COURT: All right, sir. Thank you very much.

10:42:53 2 Next is No. 39, Ms. Pope.

10:42:57 3 JUROR POPE: My name is Sybil Pope. I live in

10:43:01 4 Marshall, Texas. I have no children. I work two jobs.

10:43:06 5 I'm a CSR at Family Dollar in Hallsville, and I also work

10:43:11 6 as a caregiver at Texas Home Health. I've worked at Family

10:43:16 7 Dollar for a year and a half. I've worked at Texas Home

10:43:19 8 Health for a couple of years.

10:43:22 9 I'm a high school graduate.

10:43:23 10 And I'm a widow.

10:43:24 11 And I have no jury service.

10:43:25 12 THE COURT: Thank you very much, ma'am.

10:43:26 13 Next is No. 40, Ms. Vick.

10:43:31 14 JUROR VICK: My name is Virginia -- I can't say

10:43:43 15 it -- Virginia Vick, aka Kathy is what I go by. I have two

10:43:49 16 children, nine grandchildren. I work for Crosby Lebus in

10:43:54 17 maintenance. And how long have I worked there? I've been

10:43:57 18 there over nine years.

10:43:59 19 Education, I got a GED.

10:44:02 20 I'm divorced. How long has it --

10:44:06 21 THE COURT: Have you ever served --

10:44:09 22 JUROR VICK: And I was on a -- I did serve on a

10:44:10 23 jury and it was in Gilmer, and it was for -- I guess it

10:44:13 24 would be criminal. It was like workman's comp.

10:44:16 25 THE COURT: How long ago, ma'am?

10:44:18 1 JUROR VICK: Oh, that has been, probably 20 years
10:44:23 2 ago.

10:44:23 3 THE COURT: And that's the only time you've ever
10:44:24 4 served on a jury?

10:44:27 5 JUROR VICK: Yes.

10:44:28 6 THE COURT: Okay. Thank you very much.

10:44:34 7 All right. Thank you, ladies and gentlemen. I do
10:44:38 8 appreciate those responses.

10:44:40 9 Now, I do have a couple of other things I need to
10:44:42 10 go over with you before I turn the questioning over to the
10:44:44 11 lawyers.

10:44:45 12 Those of you that are selected to serve on the
10:44:47 13 jury in this case will serve in the role as the judges of
10:44:52 14 the facts, and the jurors selected to serve in this case
10:44:54 15 will make the sole determination about what the facts are
10:45:00 16 in this case.

10:45:00 17 My job as the judge is to rule on questions of
10:45:03 18 law, evidence, procedure, maintain the decorum of the
10:45:07 19 courtroom, and to oversee an efficient flow of the trial
10:45:10 20 and the evidence.

10:45:10 21 Also, I want to say a couple things to you at this
10:45:14 22 point about our judicial system that hopefully will put
10:45:18 23 things in a proper perspective for you.

10:45:20 24 In any civil jury trial, such as this one, besides
10:45:25 25 the parties themselves, there are always three

10:45:28 1 participants, the jury, the judge, and the lawyers.

10:45:33 2 With regard to the lawyers, I think it's important
10:45:37 3 for each of you to understand that our judicial system is
10:45:42 4 an adversary system, which simply means that during the
10:45:46 5 course of the trial, the parties will seek to present their
10:45:50 6 respective cases through their counsel in the very best
10:45:54 7 light possible.

10:45:54 8 Now, it's no surprise to any of you that lawyers
10:45:59 9 are sometimes criticized in the public and in the media,
10:46:03 10 but the Court has observed that much of this criticism is
10:46:07 11 often the result of a basic mis -- misunderstanding about
10:46:10 12 our adversary system in which the lawyers act as advocates
10:46:16 13 for the competing parties.

10:46:18 14 And as an advocate, ladies and gentlemen, a lawyer
10:46:21 15 is ethically and legally obligated to zealously assert his
10:46:26 16 or her client's position under the rules of our adversary
10:46:31 17 system. And by presenting the best case possible on behalf
10:46:34 18 of their clients, the lawyers hopefully will enable the
10:46:37 19 jury to better weigh the relevant evidence, to determine
10:46:42 20 the truth and to arrive at a just verdict based on that
10:46:46 21 evidence.

10:46:46 22 This system, this adversary system, has served our
10:46:51 23 nation well for over 200 years, and America's lawyers have
10:46:55 24 been and will be an important part of that as we go
10:46:59 25 forward.

10:46:59 1 So throughout this trial, even though there may be
10:47:02 2 times when I might frown or even grumble at the lawyers
10:47:07 3 from time to time, it's simply because I'm trying to make
10:47:09 4 sure that their advocacy doesn't get outside the boundaries
10:47:14 5 of our adversary system and our rules of procedure.

10:47:17 6 But I want you all to keep in mind that they are
10:47:21 7 just doing their jobs, and I think it's important for you
10:47:23 8 to have that in mind as we go forward.

10:47:26 9 Also, ladies and gentlemen, those of you that are
10:47:29 10 selected on the jury should know that during the trial, I'm
10:47:33 11 going to do my very best to make sure that those of you on
10:47:36 12 the jury have no idea about what I think about the
10:47:41 13 witnesses or their testimony or the evidence, because
10:47:46 14 deciding the facts in this case based on the evidence and
10:47:49 15 the testimony and the witnesses is the jury's job. It's
10:47:52 16 not my job.

10:47:53 17 So those of you that are selected on the jury
10:47:57 18 should not take any expressions that you see or think you
10:48:02 19 see as coming from me or anything that you think is coming
10:48:06 20 from me as something that you should consider or make a
10:48:08 21 factor in deciding what the ultimate facts are in this
10:48:12 22 case.

10:48:12 23 With that, we'll proceed to let the lawyers
10:48:16 24 address the panel, as I indicated to you earlier.

10:48:21 25 Mr. Baxter, you may address the panel on behalf of

10:48:24 1 the Plaintiff.

10:48:25 2 MR. BAXTER: Thank you, Your Honor.

10:48:25 3 THE COURT: Would you like a warning on your time?

10:48:29 4 MR. BAXTER: I would. Five and one, please?

10:48:32 5 Judge.

10:48:33 6 THE COURT: I'll warn you when you have five
10:48:35 7 minutes remaining and when you have one minute remaining.

10:48:39 8 MR. BAXTER: Thank you, Your Honor.

10:48:39 9 THE COURT: You may proceed.

10:48:41 10 MR. BAXTER: Thank you.

10:48:42 11 Good morning, ladies and gentlemen. These are
10:48:43 12 strange times, and I know the judge has already expressed
10:48:47 13 to you his appreciation for you being here. And on behalf
10:48:50 14 of both parties, I know all the lawyers appreciate your
10:48:54 15 being here.

10:48:54 16 We will try not to waste your time. We're going
10:48:57 17 to be efficient, and I think you're going to find this to
10:48:59 18 be an interesting case.

10:48:59 19 As you did for us, let me tell you, as I said, my
10:49:06 20 name is Sam Baxter. I'm married to Judge Lauren Parish,
10:49:13 21 who for 24 years sat in Gilmer and Marion County as a state
10:49:18 22 district judge.

10:49:19 23 We have four children. One, Keaton, that is a
10:49:22 24 band director at Gilmer High School. Three adopted
10:49:26 25 children: Andrew that works at the Boys & Girls Club here,

10:49:31 1 he's from Brazil; Matthew, who lives in Arkansas and works
10:49:35 2 for a staffing company there, he's from Thailand; and the
10:49:40 3 precious one, Sophie, who is from India, she's a recent
10:49:44 4 college graduate and working in pre-K actually in Thailand
10:49:49 5 right now.

10:49:50 6 Now, I said I was married to Judge Parish, and
10:49:56 7 that causes me to now ask the panel members who knows Judge
10:50:01 8 Parish? And for those of you that are asking now, do I
10:50:07 9 have to stand up when she comes in the room, the answer is
10:50:10 10 yes.

10:50:11 11 Now, let me start with No. 15, if I can.

10:50:23 12 THE COURT: Let's wait until we get the
10:50:25 13 microphones back there.

10:50:27 14 MR. BAXTER: And I believe, Ms. Brian, at one time
10:50:29 15 you were working in the probation department in Upshur
10:50:34 16 County.

10:50:34 17 JUROR BRIAN: That's correct.

10:50:36 18 MR. BAXTER: Did you work for Judge Parish?

10:50:39 19 JUROR BRIAN: Yes, sir.

10:50:39 20 MR. BAXTER: I know how she is as a boss. Why
10:50:42 21 don't you tell me how she was as a boss to you?

10:50:42 22 JUROR BRIAN: She was nice, but she was very firm.

10:50:44 23 MR. BAXTER: I found that to be true. Yes, ma'am,
10:50:46 24 thank you.

10:50:47 25 JUROR BRIAN: You're welcome.

10:50:48 1 MR. BAXTER: Anything about that, Ms. Brian, would
10:50:50 2 be a problem in this case?

10:50:52 3 JUROR BRIAN: No, that was a long time ago, so...

10:50:55 4 MR. BAXTER: Yes, ma'am.

10:50:56 5 There was some other hands that know my wife.

10:50:59 6 No. 4.

10:51:04 7 JUROR CANNON: Yes, sir.

10:51:05 8 MR. BAXTER: How do you know Laurie?

10:51:07 9 JUROR CANNON: Lauren was two years younger than
10:51:09 10 I -- I -- with the lady that I sit with, Blynne also sat
10:51:15 11 with her.

10:51:15 12 MR. BAXTER: Her sister.

10:51:16 13 JUROR CANNON: Yes, that's the baby sister.

10:51:19 14 MR. BAXTER: Yes, ma'am.

10:51:20 15 JUROR CANNON: And I worked also with Betty and
10:51:23 16 have been in the Upshur County Players with Betty.

10:51:26 17 MR. BAXTER: Okay. Anything about that, ma'am,
10:51:28 18 that would be of any concern in this case?

10:51:30 19 JUROR CANNON: No, sir.

10:51:31 20 MR. BAXTER: All right. Thank you, Ms. Cannon, I
10:51:33 21 appreciate it.

10:51:34 22 Who else? Yes, sir. No. 27?

10:51:42 23 JUROR BEASLEY: I didn't know your wife
10:51:45 24 personally, but I've been summonsed before her a couple --
10:51:50 25 well, probably three times actually. She always treated me

10:51:54 1 very nicely, and I never did get to serve on the jury
10:51:56 2 though.

10:51:56 3 MR. BAXTER: I trust she summonsed you for jury
10:52:00 4 duty and not anything else.

10:52:03 5 JUROR BEASLEY: Right, jury duty.

10:52:04 6 MR. BAXTER: All right. Thank you, sir.

10:52:05 7 Anybody else? There's one more.

10:52:07 8 JUROR JUDD: I served under -- on her District
10:52:10 9 Court on the grand jury.

10:52:11 10 MR. BAXTER: How was that experience?

10:52:14 11 JUROR JUDD: It was -- it was good.

10:52:15 12 MR. BAXTER: Anything about that that gives me a
10:52:17 13 problem? Did she overwork you or make you stay there too
10:52:21 14 long, anything of the sort?

10:52:23 15 JUROR JUDD: No, sir, no, sir.

10:52:24 16 MR. BAXTER: All right. Thank you very much.

10:52:26 17 Anybody else? One more. Ms. Hood, back here behind you --
10:52:30 18 oh, we have one right here, I'm sorry. No. 24.

10:52:33 19 JUROR HAGGARD: I know Lauren because she was the
10:52:36 20 Judge in Marion County, and I've had a few brief
10:52:40 21 conversations, but nothing that would affect anything here.

10:52:44 22 MR. BAXTER: All right.

10:52:50 23 JUROR HAGGARD: She's a very nice lady.

10:52:50 24 MR. BAXTER: Thank you, ma'am.

10:52:50 25 Ms. Hood?

10:52:52 1 JUROR HOOD: Judge Parish and my father were in
10:52:56 2 practice prior to her taking the bench -- many, many years
10:52:57 3 ago.

10:52:59 4 MR. BAXTER: Okay.

10:52:59 5 JUROR HOOD: I never was under her there in court.

10:52:59 6 MR. BAXTER: All right. Thank you, Ms. Hood.

10:53:01 7 Anybody else?

10:53:01 8 The Judge said that we could have a brief period
10:53:04 9 of time to give you a high-level overview of what this case
10:53:10 10 is about. And let me tell you, this is a patent case, and
10:53:14 11 it's going to involve technology involving what is known as
10:53:19 12 LTE and the LTE standard that we're going to talk about in
10:53:29 13 just a few moments.

10:53:30 14 So it's telephone technology, and it has to do
10:53:32 15 with uploading and downloading data and information from a
10:53:34 16 tower to a phone, from a base station to a phone.

10:53:41 17 And if I can have the first slide, Ms. Truelove.

10:53:48 18 Starting in the early 2000s, there was a phone
10:53:51 19 technology system called 3G. And the people that are
10:53:53 20 involved that are incredibly smart that deal with all of
10:53:59 21 this telephone communication realized that there was --
10:54:02 22 because the smartphones had gotten so smart, that there was
10:54:06 23 going to be, in effect, a tsunami of data that these
10:54:10 24 telephones and base stations and the system was going to be
10:54:14 25 required to handle.

10:54:19 1 And I put a slide that I hope you can see on the
10:54:21 2 screen here, and it shows the data and what's known as an
10:54:30 3 exabyte. And that's a 1 and a whole bunch of commas of
10:54:34 4 bits of information that is transmitted across the system.

10:54:35 5 And they realized that the current 3G system
10:54:38 6 wasn't going to be good enough, and so they started working
10:54:41 7 on what came to be known as the 4G system or the LTE
10:54:46 8 system.

10:54:53 9 And the way that that takes place -- if I can see
10:54:56 10 the next slide, Ms. Truelove -- is that there is a group
10:54:59 11 called the 3GPP, and a lot of really smart folks sent
10:55:02 12 delegates to that group. And they started working on the
10:55:04 13 technical standards that were going to be used in order to
10:55:08 14 get 4G or LTE up and running.

10:55:15 15 And the standard simply means -- if I can have the
10:55:19 16 next slide. This is nothing we're all familiar with. It
10:55:22 17 is standardized in the United States what our wall plug
10:55:24 18 looks like. So no matter where you go, from Oregon to
10:55:28 19 Florida to New York, your plug on your hair dryer or your
10:55:32 20 charging device for your phone is going to fit in that
10:55:35 21 socket. And that's because of a standard.

10:55:40 22 The same is true for phones. There is a standard
10:55:42 23 that the phone can be built to, to access the network.
10:55:50 24 Except here, it's worldwide.

10:55:53 25 If I can see the next slide, please, Ms. Truelove.

10:55:56 1 Companies send delegates to these conferences.

10:56:00 2 They submit proposals, and they submit patents that they
10:56:07 3 think will endeavor that network to work better.

10:56:10 4 In this case, you're going to see five patents and
10:56:15 5 hear about five patents that are owned by my client,
10:56:18 6 PanOptis, that we say that are infringed by Apple.

10:56:25 7 And that generally is what this lawsuit is going
10:56:27 8 to be about.

10:56:27 9 Now, let me ask a few questions of you. The
10:56:36 10 lawyers for Apple are seated here at the table. And my
10:56:41 11 friend, Ms. Melissa Smith, is one of them. She lives in
10:56:46 12 Jefferson. And does anybody know Ms. Smith? I have one
10:56:57 13 hand.

10:57:02 14 JUROR BERRY: Yes, sir, I do.

10:57:03 15 MR. BAXTER: How do you know Ms. Smith?

10:57:05 16 JUROR BERRY: We volunteered in a civic
10:57:07 17 organization together probably 15-plus years ago.

10:57:09 18 MR. BAXTER: Yes, ma'am. Are you still in that
10:57:12 19 organization?

10:57:13 20 JUROR BERRY: I'm a sustainer in that
10:57:14 21 organization.

10:57:14 22 MR. BAXTER: Okay. Is Ms. Smith still in?

10:57:17 23 JUROR BERRY: I'm not real sure. We have lost
10:57:20 24 contact.

10:57:20 25 MR. BAXTER: Anything about that would pose me a

10:57:23 1 problem in this case that I ought to worry about?

10:57:24 2 JUROR BERRY: No, sir.

10:57:25 3 MR. BAXTER: Thank you, ma'am.

10:57:26 4 Anybody else?

10:57:26 5 THE COURT: And that's Ms. Berry, No. 22; am I
10:57:30 6 correct?

10:57:30 7 MR. BAXTER: Thank you, Your Honor.

10:57:31 8 THE COURT: Make sure I see that little bitty
10:57:33 9 number from way up here. Thank you.

10:57:34 10 MR. BAXTER: Anybody else know Melissa Smith or
10:57:38 11 her law firm, Gillam & Smith. Her law partner is Gil
10:57:43 12 Gillam.

10:57:44 13 Her colleague here at this trial is going to be
10:57:48 14 Mr. Joe Mueller. Mr. Mueller, I believe, is from Boston,
10:57:54 15 or in those environs anyway. I suspect no one knows him,
10:57:56 16 but just on the off chance that you've ever dealt with
10:57:58 17 Mr. Mueller when he's been in court here, anybody know
10:58:02 18 Mr. Mueller?

10:58:02 19 All right. How many people have an Apple phone?
10:58:09 20 Raise your hand. Most of you. You're not going to hear
10:58:13 21 any bad things from us about the Apple phone. We think
10:58:18 22 it's a great phone. We think we help make it a better
10:58:21 23 phone.

10:58:22 24 But my real question to you is, for those that
10:58:25 25 either own an Apple phone or simply know about Apple in the

10:58:30 1 marketplace, how many people are going to feel, well, it's
10:58:35 2 Apple, they're a big company, they put out great products,
10:58:39 3 and surely they would not infringe any patents? Does
10:58:42 4 anybody feel that way?

10:58:43 5 Does anybody feel like that because they are, in
10:58:50 6 fact, a great company and put out great products, that they
10:58:54 7 shouldn't be hauled into court and ask a jury if, in fact,
10:58:59 8 they infringed somebody else's patents? Does anybody feel
10:59:03 9 that way?

10:59:04 10 I guess my question is, is that my company,
10:59:08 11 PanOptis, are we going to be on the same or similar footing
10:59:11 12 as Apple is right now? Can we start out even? Is there
10:59:15 13 anybody that thinks that that couldn't happen?

10:59:18 14 All right. Let me tell you a little bit about
10:59:27 15 PanOptis. We are a company that holds patents. We hold
10:59:29 16 these five patents. We own these patents. We did not
10:59:35 17 develop the patents, and we don't sell a product. We
10:59:39 18 simply own intellectual property and from time to time ask
10:59:42 19 people to pay money to take a license to our intellectual
10:59:45 20 property.

10:59:46 21 Is there anybody that has a problem with the fact
10:59:50 22 that PanOptis doesn't own anything but patents and they
10:59:56 23 don't have a product, they don't make a product, but they,
11:00:00 24 in fact, own very valuable property? Does that pose a
11:00:05 25 problem to anyone? Will we still be on the same footing as

11:00:09 1 Apple? Anybody at all?

11:00:11 2 Is there anyone here that's ever worked as a
11:00:19 3 computer programmer or can work on computers and has some
11:00:24 4 technical skills in that regard?

11:00:28 5 We have -- yes, sir, No. 10. And I noticed,
11:00:35 6 Mr. Snyder, that you apparently work at LeTourneau, and
11:00:42 7 you're in charge of their telecom information; is that
11:00:45 8 right?

11:00:46 9 JUROR SNYDER: That's right.

11:00:46 10 MR. BAXTER: Can you tell me about what you --
11:00:48 11 what you do there?

11:00:50 12 JUROR SNYDER: I manage the internal network as
11:00:52 13 far as the -- the cabling, the infrastructure, layer one
11:00:56 14 across the university, and then also to our remote
11:01:00 15 campuses. So I also deal with the contracts between
11:01:04 16 Verizon and Sprint and AT&T as far as our connections --
11:01:07 17 our Internet connections with the local facilities, as
11:01:10 18 well.

11:01:10 19 MR. BAXTER: If I started -- or not I, if smart
11:01:13 20 lawyers in this case talking to you about uploads and
11:01:18 21 downloads and megabytes, is that going to be right down
11:01:22 22 your alley?

11:01:22 23 JUROR SNYDER: Probably.

11:01:24 24 MR. BAXTER: Do you deal with base stations in any
11:01:26 25 way or deal with companies in the base stations in order to

11:01:28 1 get your data spread around your various campuses?

11:01:31 2 JUROR SNYDER: I don't know if you mean third
11:01:34 3 parties that own the towers?

11:01:35 4 MR. BAXTER: Yes, sir, right.

11:01:36 5 JUROR SNYDER: No, I don't deal directly with
11:01:39 6 them.

11:01:39 7 MR. BAXTER: Okay. Do you deal with AT&T and
11:01:41 8 Sprint and those companies?

11:01:43 9 JUROR SNYDER: Yes.

11:01:44 10 MR. BAXTER: And how do you interact with them,
11:01:46 11 Mr. Snyder?

11:01:47 12 JUROR SNYDER: I deal in the contracts and then on
11:01:49 13 a customer service basis, as well.

11:01:51 14 MR. BAXTER: Okay. Are you familiar with a
11:01:52 15 concept called as Open Source?

11:01:54 16 JUROR SNYDER: Uh-huh.

11:01:54 17 MR. BAXTER: Tell me your feelings about --

11:01:54 18 THE COURT: Just -- just a minute. Mr. Snyder,
11:01:56 19 you're going to have to answer yes or no.

11:01:58 20 JUROR SNYDER: Oh, yes. Yes. I mean, I work with
11:02:00 21 a lot of smart guys. I don't consider myself one, but,
11:02:03 22 yes.

11:02:03 23 THE COURT: Just for your benefit and everybody
11:02:05 24 else's, non-verbal responses like "uh-huh" won't get picked
11:02:10 25 up in the record, so you'll need to say either yes or no.

11:02:13 1 Go ahead, counsel.

11:02:14 2 MR. BAXTER: You and I are in the same boat about
11:02:17 3 that, Mr. Snyder. But do you have any feeling about Open
11:02:21 4 Source, about whether all code ought to be available?

11:02:24 5 JUROR SNYDER: I would -- I mean, I think code
11:02:26 6 should be available, but I -- I do believe, obviously,
11:02:29 7 those that -- that create the code should have property or
11:02:33 8 allowances for that, yes.

11:02:34 9 MR. BAXTER: Are you familiar with upload and
11:02:37 10 download speeds and how they can either go slow or go fast?

11:02:41 11 JUROR SNYDER: Yes.

11:02:42 12 MR. BAXTER: If I were to -- to use a term that
11:02:44 13 says 25 megabits per second, would you know what that
11:02:49 14 meant?

11:02:49 15 JUROR SNYDER: Yes.

11:02:50 16 MR. BAXTER: Okay. All right. Thank you,
11:02:52 17 Mr. Snyder.

11:02:53 18 Was there someone else? Anybody else that is
11:03:00 19 familiar with this sort of mobile technology? Anybody at
11:03:03 20 all?

11:03:04 21 Is there anybody that's ever dealt with any sort
11:03:12 22 of standard setting bodies, organizations that set
11:03:19 23 standards that you might use either in technology or that
11:03:21 24 you would use, for example, in school about what the
11:03:24 25 standards ought to be for students passing? Anybody like

11:03:29 1 that?

11:03:30 2 We have one right here. Mr. Young?

11:03:38 3 JUROR YOUNG: Are you talking about like a
11:03:39 4 national electrical code book? Is that what you're
11:03:42 5 referring to?

11:03:43 6 MR. BAXTER: I am, yes, sir. Do you deal with
11:03:45 7 that?

11:03:45 8 JUROR YOUNG: I have.

11:03:46 9 MR. BAXTER: Do you know how those sorts of books
11:03:49 10 get promulgated? Who makes those rules?

11:03:53 11 JUROR YOUNG: Yeah, I know who.

11:03:54 12 MR. BAXTER: All right. Is it something that if
11:03:55 13 you're in that field, you're expected to follow and want to
11:03:58 14 follow because that's how it works?

11:04:00 15 JUROR YOUNG: Yes.

11:04:01 16 MR. BAXTER: Okay. Anything about that you think
11:04:02 17 would be a problem sitting on this case involving standards
11:04:07 18 for, in effect, telephone service?

11:04:09 19 JUROR YOUNG: No.

11:04:10 20 MR. BAXTER: Mobile telephone service?

11:04:16 21 JUROR YOUNG: No.

11:04:16 22 MR. BAXTER: All right. Thank you.

11:04:17 23 Anybody else?

11:04:18 24 How many people -- oh, I'm sorry, yes, ma'am,

11:04:22 25 Ms. Cannon?

11:04:23 1 JUROR CANNON: By standards, do you mean a set of
11:04:29 2 rules that they are going to live up to to get the
11:04:31 3 particular grade they're going to get?

11:04:33 4 MR. BAXTER: Well, that would certainly be one
11:04:35 5 example, Ms. Cannon, of standards.

11:04:38 6 JUROR CANNON: I'm -- I'm a pretty stern rule
11:04:43 7 follower. If it says don't chew gum, I mean, don't chew
11:04:49 8 gum.

11:04:49 9 MR. BAXTER: Okay.

11:04:51 10 JUROR CANNON: But as far as the math TEKS --

11:04:51 11 MR. BAXTER: Yes, ma'am.

11:04:53 12 JUROR CANNON: -- I have sat in on some of the
11:04:56 13 state committees.

11:04:56 14 MR. BAXTER: Okay. Anything about that pose a
11:04:58 15 problem in this case, Ms. Cannon?

11:04:58 16 JUROR CANNON: No, sir.

11:04:59 17 MR. BAXTER: Did you teach Keaton in -- in high
11:05:01 18 school math?

11:05:01 19 JUROR CANNON: I watched Keaton's drum line many a
11:05:04 20 time at Buckeye Stadium.

11:05:06 21 MR. BAXTER: Okay. Well, he's still at it.

11:05:09 22 JUROR CANNON: Yes, sir, he is.

11:05:11 23 MR. BAXTER: Thank you, ma'am. I appreciate it.

11:05:13 24 How many people here actually own an iPhone? Let
11:05:19 25 me see your hands.

11:05:20 1 Maybe it would be better for me to ask how many
11:05:23 2 people don't own an iPhone.

11:05:28 3 Well, it's about 50/50.

11:05:29 4 For those of you that own an iPhone, do you
11:05:34 5 remember that you turn it on, and up in the top left-hand
11:05:37 6 corner, it will probably show you the strength of signal
11:05:41 7 and from time to time will show LTE, which is the sort of
11:05:45 8 network it's operating on? Does anybody remember that?
11:05:48 9 Anybody ever thought about what LTE meant before today?

11:05:53 10 Which stands, by the way, for Long-Term Evolution.
11:05:57 11 Why they call it that, I don't know. But that's what LTE
11:06:02 12 standards for, and that's the network over which your phone
11:06:05 13 is operating.

11:06:05 14 Is there anyone here that thinks that speed on a
11:06:11 15 phone is important; that you would like to have your
11:06:14 16 connection fast? Does everybody think that? Does anybody
11:06:19 17 not care about their speed?

11:06:21 18 What about having a stable connection; that is,
11:06:24 19 one that doesn't freeze up. If you download a movie, it
11:06:29 20 sails right through and doesn't freeze up and you're
11:06:33 21 sitting there shaking the phone trying to get it to work?
11:06:36 22 Does everybody think that's important? If you do, raise
11:06:39 23 your hand.

11:06:40 24 How many people here have ever downloaded a movie
11:06:45 25 on their phone? Let me see your hands.

11:06:48 1 How many people use their phone to, for example,
11:06:52 2 look at YouTube?
11:06:59 3 How many people get email on their phone?
11:07:01 4 How many people send text messages on their phone?
11:07:05 5 How many people play games on their phone?
11:07:10 6 Is there anybody that doesn't have -- it doesn't
11:07:19 7 have to be an iPhone -- is there anybody that doesn't have
11:07:22 8 a mobile phone, whether it's an iPhone or an Android
11:07:26 9 device?
11:07:27 10 Is there anybody that's not addicted to that
11:07:30 11 phone?
11:07:30 12 All right. Is there anyone here that's ever
11:07:36 13 applied for a patent, or even know anybody that's applied
11:07:40 14 for a patent?
11:07:41 15 Yes, sir? No. 10 again.
11:07:45 16 JUROR SNYDER: My dad -- my dad.
11:07:47 17 MR. BAXTER: Did he get a patent, Mr. Snyder?
11:07:50 18 JUROR SNYDER: He does. He has 21 patents in the
11:07:52 19 oil industry.
11:07:53 20 MR. BAXTER: Okay. Is that having to do with,
11:07:55 21 like, fracking or how to drill or --
11:07:59 22 JUROR SNYDER: It's safety relief valves.
11:08:03 23 MR. BAXTER: Do -- do you know what process he
11:08:04 24 went through to get those patents?
11:08:06 25 JUROR SNYDER: I do not.

11:08:07 1 MR. BAXTER: Do you know if he had to go hire him
11:08:10 2 a lawyer or things of that ilk?

11:08:11 3 JUROR SNYDER: It was through his business.

11:08:12 4 MR. BAXTER: His business? Okay. All right.
11:08:13 5 Thank you.

11:08:14 6 There was someone else that had -- back here, yes,
11:08:17 7 ma'am?

11:08:17 8 JUROR BERRY: I worked for a company that had
11:08:20 9 several patents in heavy-duty trucking, Stemco.

11:08:24 10 MR. BAXTER: Yes, ma'am.

11:08:26 11 JUROR BERRY: I was never involved in the process
11:08:27 12 but was there when we applied for several.

11:08:30 13 MR. BAXTER: Okay. I'm going to get you to stand
11:08:31 14 up just a second longer. I'm going to ask another question
11:08:36 15 and come back to you if you don't mind.

11:08:38 16 How many people here work for a company that have
11:08:42 17 patents or have intellectual property?

11:08:44 18 Okay. You said your company Stemco does. Do you
11:08:49 19 know what they do to protect their intellectual property?

11:08:51 20 JUROR BERRY: Well, I -- they're part of a big
11:08:55 21 corporation, so they do all they can legally to protect
11:08:58 22 their patents.

11:08:59 23 MR. BAXTER: If they have patents and it's theirs,
11:09:03 24 they don't want somebody to use it without their
11:09:06 25 permission, do they?

11:09:07 1 JUROR BERRY: Correct.

11:09:08 2 MR. BAXTER: Do you know of anything the company
11:09:09 3 could do -- if somebody does that, if someone takes their
11:09:12 4 property and starts using one of their patents, do you know
11:09:16 5 of anything they can do other than come to a courthouse
11:09:18 6 like this to try to --

11:09:20 7 JUROR BERRY: They start with a cease and desist
11:09:23 8 order asking them to cease operations --

11:09:25 9 MR. BAXTER: They might very well write them a
11:09:27 10 letter and ask them to. But if they don't, does anybody
11:09:31 11 know any recourse a company has other than coming to a
11:09:36 12 court like this in front of Judge Gilstrap and ask people
11:09:38 13 to stop or to pay them for what they've used? Do you know
11:09:41 14 of anything they can do besides come to court?

11:09:45 15 JUROR BERRY: No, sir, that's beyond my knowledge.

11:09:47 16 MR. BAXTER: There was somebody in the back that
11:09:49 17 worked for a -- yes, ma'am?

11:09:51 18 JUROR VICK: Lebus has a patent on their heat
11:09:55 19 treating. You know, it's a process and they have a patent
11:10:01 20 on it.

11:10:01 21 MR. BAXTER: Do you know of anything they do to
11:10:03 22 protect their patent so that nobody else uses it or takes
11:10:07 23 it?

11:10:08 24 JUROR VICK: I'm not sure what they do, but I'm
11:10:10 25 sure they do something.

11:10:11 1 MR. BAXTER: It's valuable to them.

11:10:13 2 JUROR VICK: Yeah, it's very valuable.

11:10:15 3 MR. BAXTER: And they would like to protect.

11:10:19 4 JUROR VICK: It's what keeps that company running.

11:10:23 5 MR. BAXTER: Okay. Thank you, ma'am.

11:10:25 6 Is there anybody here that is a member of any

11:10:27 7 group that opposes lawsuits? Anybody at all?

11:10:33 8 Let me ask you a slightly different question. How

11:10:37 9 many people think there are too many lawsuits that are

11:10:39 10 filed? Let me see your hands.

11:10:43 11 How many people think there are too many lawyers?

11:10:50 12 We have one brave soul here in the back.

11:10:55 13 For those of you that are worried about too many

11:10:58 14 lawsuits, is there -- anybody think that there are too many

11:11:02 15 patent lawsuits filed? That's what this case is; that it

11:11:06 16 involves intellectual property and involves a lot of money.

11:11:10 17 Is there anybody that says, well, gosh, they

11:11:13 18 shouldn't be clogging up the courts with those. They ought

11:11:16 19 to be doing criminal work. Anybody feel that way?

11:11:19 20 Does anybody have a problem with a company that

11:11:25 21 owns intellectual property coming to court and saying that

11:11:29 22 someone else is using their property, and they ought to pay

11:11:33 23 for it? Anybody got a problem with that top side or

11:11:36 24 bottom?

11:11:37 25 THE COURT: Mr. Baxter, be sure you use the

11:11:39 1 microphone, please.

11:11:40 2 MR. BAXTER: I'm sorry, Your Honor. I wandered
11:11:42 3 away. I will.

11:11:42 4 Now, let me ask you a little bit about some of the
11:11:51 5 terms that you're going to hear in -- in this case.

11:11:56 6 And if I could -- if we have a slide on that,
11:11:58 7 Ms. Truelove. We'll have to find it.

11:12:03 8 But here are some of the terms that you're going
11:12:05 9 to hear, and you've already heard some from Judge Gilstrap.

11:12:10 10 But the first one is infringement. How many
11:12:12 11 people have heard of that term before? Most of you have.
11:12:16 12 And so you know, that's when one party says that another
11:12:20 13 person or party is using their patented technology without
11:12:24 14 their permission, and that they are guilty of infringement.

11:12:30 15 The second term is called validity or invalidity.
11:12:35 16 And for -- when you watched that patent video, you found
11:12:40 17 out that there may be a question in a case involving
11:12:44 18 whether a patent is valid or not or if the patent is
11:12:49 19 invalid. And I'm going to come back to this concept in
11:12:52 20 just a moment.

11:12:54 21 But does everybody understand what that concept
11:12:56 22 is, about the validity of the patent? Anybody got a
11:13:00 23 problem with that?

11:13:01 24 The next one is prior art, and it's sort of taken
11:13:08 25 me awhile to figure out they weren't talking about

11:13:10 1 Rembrandts. What they're talking about are technical
11:13:13 2 documents that may have been published in the field that
11:13:16 3 you can look at and the Patent Office does look at before
11:13:19 4 they, in fact, grant a patent.

11:13:21 5 The next term is no less than a reasonable
11:13:25 6 royalty. And you're going to hear a lot about that in this
11:13:28 7 case because that is the standards sets out by the statute
11:13:34 8 that says if someone uses your technology, they should pay
11:13:37 9 you no less than a reasonable royalty.

11:13:43 10 Would anybody have any problems with that?

11:13:45 11 And the last one is what we talked about, standard
11:13:50 12 essential patents. And you're going to hear testimony that
11:13:54 13 the five patents that we showed you on the screen just a
11:13:56 14 little while ago Optis says are standard essential patents.
11:14:04 15 In other words, if you're going to practice the LTE
11:14:06 16 standard and you're going to be on the 4G network, you have
11:14:08 17 to use the technology in those five patents.

11:14:11 18 Does that pose a problem for anyone?

11:14:17 19 All right. So now, Ms. Truelove, if I can get you
11:14:21 20 to go back, and let's look at what Judge Gilstrap has
11:14:23 21 already told you is the burden of proof.

11:14:25 22 And he told you that the first burden that he
11:14:32 23 is -- has instructed you on already and will instruct you
11:14:35 24 on again at the end of this case is something called the
11:14:39 25 preponderance of the evidence.

11:14:42 1 That, ladies and gentlemen, is our burden. That's
11:14:46 2 the Plaintiffs' burden to show that our patents are
11:14:50 3 infringed. We have that burden, and we gladly accept it.
11:14:55 4 And the preponderance of the evidence means that you must
11:14:58 5 be persuaded by the evidence that the claim is more
11:15:01 6 probably true than not.

11:15:03 7 And if we could have the slide of the scales.

11:15:06 8 That means that the Scales of Justice that was
11:15:10 9 equal, as Judge Gilstrap told you, is now tilted ever so
11:15:15 10 slightly, that there is one more piece of evidence for the
11:15:18 11 person putting forth that proposition than the other side,
11:15:22 12 and if you find that these patents are infringed by a
11:15:27 13 preponderance of the evidence, then you'll indicate that
11:15:30 14 they are infringed.

11:15:31 15 Does that standard pose a problem to anyone?

11:15:36 16 Anyone at all?

11:15:37 17 Okay. The next standard that he talked to you
11:15:40 18 about is something called clear and convincing. Here's
11:15:45 19 where that comes in, and this is a little trickier. As you
11:15:51 20 learned from the patent video and as we talked about a
11:15:54 21 second ago, one of the issues in a patent case is the
11:15:58 22 validity of the patent.

11:16:01 23 The patent is issued by the PTO, but in a trial
11:16:06 24 like this, the Defendant can say to the jury, well, maybe
11:16:11 25 we use that technology, but the patent is not valid, and

11:16:17 1 that is something that will be presented in this case to
11:16:19 2 the jury because they're going to say that.

11:16:23 3 But the burden of proof is highly different for
11:16:30 4 that concept than there is for us to prove that they
11:16:33 5 infringed the patent, and that concept is something known
11:16:35 6 as clear and convincing evidence.

11:16:38 7 And I think Judge Gilstrap will give you an
11:16:40 8 instruction that reads something like this: It means you
11:16:44 9 have an abiding conviction that the truth of the party's
11:16:47 10 factual contentions are highly probable. Such evidence
11:16:52 11 requires a higher standard of proof than proof by a
11:16:55 12 preponderance of the evidence.

11:16:55 13 And if I can see the Scales of Justice.

11:17:00 14 That means you're not tilting it a little bit, but
11:17:03 15 you've got to go like this.

11:17:05 16 Now, is there anybody on the jury panel that would
11:17:07 17 have a problem applying that standard of proof to Apple if
11:17:13 18 they come in here and allege that one or more of our
11:17:16 19 patents are not valid? Is there anybody that would
11:17:20 20 hesitate to say, I will listen to your evidence, but it's
11:17:23 21 going to have to be clear and convincing before I can
11:17:26 22 decide that? That pose a problem to anybody?

11:17:29 23 Now, Ms. Hood, let's talk about the one other
11:17:38 24 burden of proof that Judge Gilstrap talked about, and it's
11:17:41 25 something that I assume you deal with every day. Tell the

11:17:44 1 jury panel what that is.

11:17:45 2 JUROR HOOD: Beyond a reasonable doubt.

11:17:47 3 MR. BAXTER: Which means in a criminal case, in
11:17:50 4 order to prove someone's guilt, it's got to be beyond a
11:17:54 5 reasonable doubt.

11:17:54 6 JUROR HOOD: A reasonable doubt.

11:17:56 7 MR. BAXTER: Right?

11:17:58 8 JUROR HOOD: Right.

11:17:58 9 MR. BAXTER: But that's not so in a civil case, is
11:18:01 10 it?

11:18:01 11 JUROR HOOD: Correct.

11:18:02 12 MR. BAXTER: And not so in this case?

11:18:04 13 JUROR HOOD: Correct.

11:18:04 14 MR. BAXTER: All right. Thank you.

11:18:04 15 JUROR HOOD: There's no definition for that.

11:18:06 16 MR. BAXTER: Yes, ma'am.

11:18:06 17 Who on this panel is pretty good -- and,
11:18:14 18 Mr. Snyder, I'm probably going to get you up again -- is
11:18:18 19 pretty good about either working on computers or more
11:18:23 20 importantly, served as the function of a 14-year-old child
11:18:30 21 that knows how to operate a phone and knows where all the
11:18:32 22 features are and knows how to get it to work and sing and
11:18:37 23 dance? Is there anybody on the panel that even knows how
11:18:41 24 to work on a phone or at least understands all the
11:18:44 25 functions of a phone so that you can press buttons and

11:18:47 1 things magically appear?

11:18:49 2 All right. Let me see a show of hands.

11:18:52 3 I know, Mr. Snyder, you're going to.

11:18:55 4 All right. We're going to go back to Ms. Cannon
11:18:57 5 in just a moment.

11:18:59 6 JUROR CANNON: I need the question restated.

11:19:02 7 MR. BAXTER: Yes, the question restated?

11:19:05 8 JUROR CANNON: Yes, sir.

11:19:05 9 MR. BAXTER: I want to know who on this panel is
11:19:07 10 sort of a techie geek that knows how to make these things
11:19:12 11 sing and dance and operate on the phones and use all those
11:19:15 12 features. Is there anybody like that?

11:19:17 13 Yes, ma'am? Yes, ma'am?

11:19:39 14 JUROR EVANS: Well, I mean, I know how to work my
11:19:40 15 phone pretty -- pretty good.

11:19:40 16 MR. BAXTER: Pretty well?

17 JUROR EVANS: Yes, sir.

18 MR. BAXTER: So when you get it out of the box and
19 there are no instructions, you know how to turn that rascal
20 on --

21 JUROR EVANS: I can now.

22 MR. BAXTER: -- and make it work?

23 JUROR EVANS: I did have a teenage son.

24 MR. BAXTER: Okay. And he could do it?

25 JUROR EVANS: He certainly could.

1 MR. BAXTER: Or have had teenage children that can
11:19:44 2 really operate these pieces of equipment? Let me see your
11:19:46 3 hands. Did you ever have to go to them and say, would you
11:19:49 4 please do that?

11:19:57 5 Now, ladies and gentlemen, as you might imagine,
11:20:03 6 in a lawsuit like this, or almost any lawsuit that you come
11:20:07 7 in contact with, at the end of the day, it's about money,
11:20:15 8 damages. And this case is no different in that we allege
11:20:19 9 that because we say that Apple infringes our patents and
11:20:23 10 because they have used our technology, that they, in fact,
11:20:28 11 owe us damages for that.

11:20:31 12 Now, is there anybody on the panel that just right
11:20:34 13 upfront says, you know, if I'd known you were talking about
11:20:38 14 money, I'd have said something because I just don't think
11:20:41 15 there ought to be damages assessed in a lawsuit? Anybody
11:20:47 16 feel that way?

11:20:48 17 Is there anybody -- and I'm going to tell you the
11:20:52 18 number in just a moment because we're not trying to run
11:20:55 19 from the number. There's going to be expert testimony,
11:20:59 20 damage expert, that you're going to hear about what a
11:21:03 21 reasonable royalty for Apple's use of our five patents is.

11:21:12 22 Apple, as you know, sells lots of phones, because
11:21:15 23 most of you have one. And so there's going to be testimony
11:21:18 24 about what a per unit royalty ought to be. And then
11:21:23 25 there's going to be an aggregate number.

11:21:29 1 And the aggregate number in this case, if you can
11:21:32 2 put that up, Ms. Truelove, is \$506 million, which is a lot
11:21:35 3 of money. And you're going to hear testimony about whether
11:21:41 4 or not that is a reasonable royalty or not.

11:21:45 5 Now, is there anybody on the panel that says, I
11:21:48 6 haven't heard any evidence yet, I don't know what the facts
11:21:51 7 are but that's too much money, and you're not going to get
11:21:54 8 it from me? Is there anybody that feels that way knowing
11:21:57 9 no facts, not knowing how valuable the patents are or
11:22:02 10 aren't, without knowing how much Apple uses the patent, is
11:22:04 11 there anyone that says \$506 million is too much money, and
11:22:11 12 I won't even consider it? Anybody feel that way?

11:22:20 13 Does everybody understand also that the damage
11:22:23 14 number, which will be determined by the jury, is also to be
11:22:26 15 determined under a preponderance of evidence standard?
11:22:31 16 It's not clear and convincing. It's not beyond a
11:22:34 17 reasonable doubt. But it is by, did you tilt those scales
11:22:38 18 ever so slightly in order to prove what each of your
11:22:42 19 patents is worth?

11:22:43 20 And I think the Judge is probably going to ask you
11:22:46 21 at the end of the day to give a damage number for each
11:22:49 22 patent. Does that pose a problem for anyone -- anyone at
11:22:54 23 all?

11:22:54 24 Is there anybody on the panel that has ever taken
11:23:01 25 a survey? Anybody -- just a...

11:23:08 1 Who has taken a survey on the Internet?

11:23:17 2 All right. Can I -- can I ask you just a few
11:23:21 3 questions about that, please, ma'am?

11:23:23 4 THE COURT: Give us a number, Mr. Baxter --
11:23:24 5 which --

11:23:24 6 MR. BAXTER: No. 3. I'm sorry. I wasn't very
11:23:27 7 clear, Your Honor. Thank you.

11:23:28 8 THE COURT: You have five minutes left.

11:23:30 9 MR. BAXTER: Thank you, Your Honor.

11:23:32 10 What kind of survey have you taken, please, ma'am?

11:23:36 11 JUROR ALEXANDER: I take lots of lifestyle
11:23:39 12 surveys, retail, what kind of games I like to play. I do a
11:23:43 13 lot of surveys like that.

11:23:43 14 MR. BAXTER: Are these on the Internet?

11:23:44 15 JUROR ALEXANDER: Yes, sir.

11:23:45 16 MR. BAXTER: Have you ever asked to be part of a
11:23:48 17 survey in which they said, if you'll do it, we'll give you
11:23:52 18 a gift card or we'll pay you or anything like that?

11:23:54 19 JUROR ALEXANDER: Yes, sir.

11:23:54 20 MR. BAXTER: And how did that take place?

11:23:56 21 JUROR ALEXANDER: A lot of the surveys pay a very
11:23:57 22 small amount of money. The more surveys you take, once you
11:23:59 23 hit a limit of like five or \$10.00, then you get a
11:24:02 24 PayPal --

11:24:03 25 MR. BAXTER: Okay.

11:24:05 1 JUROR ALEXANDER: -- payout.

11:24:08 2 MR. BAXTER: On those surveys did you try to
11:24:11 3 answer your best?

11:24:12 4 JUROR ALEXANDER: Always.

11:24:13 5 MR. BAXTER: Did you try to understand the
11:24:13 6 question and answer it truthfully?

11:24:13 7 JUROR ALEXANDER: Yes, sir.

11:24:14 8 MR. BAXTER: And you've done that a lot?

11:24:16 9 JUROR ALEXANDER: Fairly frequently, yes, sir.

11:24:18 10 MR. BAXTER: Okay. All right. Thank you, ma'am.

11:24:21 11 Who else? No. 2, maybe. Did you say you've taken
11:24:24 12 surveys?

11:24:25 13 JUROR BLUM: Yes, sir.

11:24:26 14 MR. BAXTER: Ms. Blum, what kind of surveys have
11:24:28 15 you taken?

11:24:29 16 JUROR BLUM: I've taken surveys for school, for
11:24:32 17 work. Every time you open an app, occasionally they'll ask
11:24:37 18 you to survey their app or it just pops up on the Internet
11:24:40 19 so you can finish reading an article. It makes you ask --
11:24:44 20 or answer a few questions before you can move on.

11:24:47 21 MR. BAXTER: In those instances, have you tried to
11:24:49 22 answer -- answer truthfully?

11:24:50 23 JUROR BLUM: Yes.

11:24:51 24 MR. BAXTER: Take it serious. They want
11:24:53 25 information, I got it, I'll give it to them?

11:24:56 1 JUROR BLUM: Yes.

11:24:57 2 MR. BAXTER: All right.

11:24:58 3 Who else has taken surveys? No. 17?

11:25:03 4 THE COURT: Please use the microphone, Mr. Baxter.

11:25:07 5 MR. BAXTER: No. 17, Your Honor.

11:25:09 6 Tell -- tell me what kind of surveys you've taken.

11:25:12 7 JUROR GONZALEZ: Well, every so often I have to
11:25:14 8 take some surveys for work to relate -- of the management,
11:25:22 9 answers like that. I've had to fill out surveys for even
11:25:28 10 church -- church housing. It's fairly common. And some of
11:25:33 11 the -- some of the surveys, once they're completed,
11:25:37 12 especially the online ones -- the online ones, they give
11:25:41 13 you the option to actually take more surveys afterwards
11:25:48 14 because there's money in that, apparently, so...

11:25:50 15 MR. BAXTER: Did you ever do that?

11:25:52 16 JUROR GONZALEZ: Not as of yet.

11:25:54 17 MR. BAXTER: Okay. All right. Thank you.

11:25:55 18 Who else has filled out surveys on the Internet?

11:26:02 19 Right here, No. 6?

11:26:09 20 Ms. Newsom, what kind of surveys have you taken,
11:26:13 21 please, ma'am?

11:26:13 22 JUROR NEWSOM: From -- surveys over different
11:26:15 23 little games I've played or products that I have looked at.

11:26:20 24 MR. BAXTER: Did you take those surveys seriously?

11:26:22 25 JUROR NEWSOM: Yes.

11:26:23 1 MR. BAXTER: And did you try to answer them as
11:26:25 2 best you could?

11:26:26 3 JUROR NEWSOM: Yes.

11:26:26 4 MR. BAXTER: Have you ever been paid to take a
11:26:29 5 survey or gotten a prize or a gift card or anything like
11:26:32 6 that?

11:26:33 7 JUROR NEWSOM: No. They've offered, but I've
11:26:36 8 always declined.

11:26:37 9 MR. BAXTER: Okay. But at least they offered?

11:26:39 10 JUROR NEWSOM: Sure.

11:26:39 11 MR. BAXTER: Okay. Thank you.

11:26:40 12 Who else has taken surveys?

11:26:42 13 All right. Let me -- let me ask you a slightly
11:26:45 14 different question now. I want you to -- well, I want to
11:26:48 15 ask one specific question if I can. There is someone on
11:26:53 16 the panel that I think -- I think it is you, Ms. Harley,
11:26:58 17 that said you had some timber cut.

11:27:02 18 JUROR HARLEY: Yes.

11:27:02 19 MR. BAXTER: Can you tell me about that, please,
11:27:04 20 ma'am?

11:27:05 21 JUROR HARLEY: Well, someone had -- someone came
11:27:07 22 onto our property that was a little ways from us and
11:27:11 23 timbered it, and we did sue them, but -- we won, but then
11:27:16 24 they just changed the name of their company.

11:27:18 25 MR. BAXTER: All right. So they came on your

11:27:21 1 property and cut your trees, took your property without
11:27:23 2 your permission?

11:27:25 3 JUROR HARLEY: Yes.

11:27:26 4 MR. BAXTER: And you felt strongly enough about it
11:27:28 5 that you sued them?

11:27:29 6 JUROR HARLEY: Absolutely.

11:27:30 7 MR. BAXTER: When you sued them, did you sue for
11:27:32 8 the value of just half the timber or a couple of logs, or
11:27:36 9 did you sue them for every tree they cut?

11:27:40 10 JUROR HARLEY: For every tree they cut.

11:27:41 11 MR. BAXTER: Did you feel like you were entitled
11:27:43 12 to get damages?

11:27:45 13 JUROR HARLEY: Absolutely.

11:27:45 14 MR. BAXTER: Did you feel like you were entitled
11:27:49 15 to get damages for every tree they took?

11:27:51 16 JUROR HARLEY: Yes, sir.

11:27:51 17 MR. BAXTER: And the damages they did to -- to
11:27:53 18 your property?

11:27:54 19 JUROR HARLEY: Yes, sir.

11:27:54 20 MR. BAXTER: Okay. In any case, whether it's tree
11:27:59 21 cutting, Ms. Harley, or whether it's infringement of
11:28:03 22 patents, do you -- do you believe at least that if people
11:28:05 23 prove they were injured and they got hurt, that they ought
11:28:08 24 to get full damages?

11:28:10 25 JUROR HARLEY: Absolutely.

11:28:10 1 MR. BAXTER: Okay. Thank you, ma'am. I
11:28:12 2 appreciate that.

11:28:12 3 Now, let me pose one more hypothetical to you. I
11:28:15 4 want you to assume that you were misfortunate enough to
11:28:19 5 have someone take your property -- let's say it's your
11:28:21 6 favorite gun, and it's in the house, and someone steals it
11:28:26 7 and takes it down to the pawnshop and hocks it for
11:28:30 8 10 percent of its value and they get caught. How many
11:28:35 9 people think that all they ought to have to pay back --

11:28:40 10 THE COURT: You have one minute remaining.

11:28:42 11 MR. BAXTER: Thank you, Your Honor -- is
11:28:43 12 10 percent of the value? How many people think you ought
11:28:46 13 to get full value for what they took?

11:28:49 14 Thank you very much.

11:28:50 15 Your Honor, thank you for your indulgence. I'm
11:28:53 16 through.

11:28:53 17 THE COURT: All right. Ms. Smith, you may address
11:28:55 18 the panel on behalf of the Defendant.

11:29:02 19 Would you like a warning on your time?

11:29:04 20 MS. SMITH: Your Honor, five and one will be great
11:29:06 21 for me as well.

11:29:07 22 THE COURT: All right. I'll warn you with five
11:29:09 23 minutes remaining and one minute remaining.

11:29:11 24 MS. SMITH: Thank you.

11:29:11 25 THE COURT: You may proceed.

11:29:12 1 MS. SMITH: May it please the Court.

11:29:27 2 Good morning, everyone again. My name is Melissa
11:29:30 3 Smith, and I represent Apple.

11:29:31 4 The -- the first thing I'm going to do this
11:29:34 5 morning and the most important thing I'll probably do is
11:29:37 6 thank you.

11:29:38 7 I know that as -- as Mr. Baxter said, these are
11:29:42 8 odd times. Many of you haven't been out of the house much
11:29:45 9 in the last five months. I know you had -- some of you
11:29:49 10 coming from as far as Big Sandy and Ore City and Gilmer
11:29:55 11 having to get here around 7:45. You had a very, very early
11:29:58 12 morning drive, and I also know that your work started long
11:30:02 13 before you got to this courthouse.

11:30:03 14 Have faith that all the information that you gave
11:30:05 15 us on the jury questionnaires, that we've poured over that
11:30:09 16 so we could ask far fewer questions this morning.

11:30:12 17 But we appreciate you taking time away from your
11:30:14 18 family and your work and your busy lives to -- to come here
11:30:18 19 today and to fill out those questionnaires and to help us
11:30:21 20 out. And so on behalf of Apple, thank you.

11:30:23 21 Now, His Honor and -- and Plaintiffs' counsel have
11:30:30 22 asked you a number of questions, and the good news today is
11:30:34 23 I'll be the last one to ask you questions. The bad news is
11:30:37 24 I have a few more questions. But as they did before they
11:30:40 25 got started, I'm going to share a little bit of personal

11:30:43 1 information about myself.

11:30:43 2 I went to the University of Texas at undergrad --
11:30:48 3 for undergrad in Austin. And then, like Judge Gilstrap, I
11:30:52 4 attended the law school at Baylor.

11:30:54 5 Right after that I moved to Jefferson, Texas. I
11:30:57 6 live not in town but outside of town in Marion County.
11:31:02 7 That was 23 years ago. So I started practicing --
11:31:06 8 immediately on moving to Jefferson, I started practicing
11:31:08 9 here in Marshall, and I've been practicing here in Marshall
11:31:10 10 for 23 years.

11:31:11 11 I own the law firm that's called Gillam and Smith.
11:31:14 12 It -- I am the Smith and my law partner was Gil Gillam. He
11:31:19 13 was actually my first boss when I came here 23 years ago.

11:31:22 14 At some point, I convinced him to make me his
11:31:25 15 partner, and we've -- it's pretty -- pretty unusual, and
11:31:28 16 I'm really proud of the fact that we've practiced together
11:31:31 17 each of my 23 years.

11:31:33 18 Our office is in that old yellow house that sits
11:31:36 19 right behind this courthouse.

11:31:37 20 Personally, I'm married. We have a seven-year-old
11:31:41 21 girl and a nine-year-old boy. So for the last five months
11:31:46 22 or so, I've been kind of a part-time lawyer and a part-time
11:31:50 23 homeschool teacher. I see the two teachers, No. 4 and
11:31:54 24 No. 13, shaking your head. I have new appreciation for --
11:31:57 25 for teaching because I'm frankly not very good at it,

11:32:01 1 especially not -- I had a third grader and math is hard
11:32:05 2 even in third grade.

11:32:06 3 Now, for those of you that are chosen to serve in
11:32:12 4 this case, Mr. Mueller is actually going to do the opening
11:32:15 5 statement in this case, and he's going to give you a proper
11:32:18 6 introduction of himself at that time.

11:32:19 7 His Honor allows us to give a short introduction
11:32:26 8 of the case, and Plaintiffs' counsel gave you some
11:32:30 9 information about how the Plaintiffs see this case.

11:32:32 10 What I want to do before I do anything else is
11:32:36 11 make one thing crystal clear. Apple's position in this
11:32:43 12 case is that it does not infringe any of Plaintiffs'
11:32:47 13 patents, not now and not ever.

11:32:51 14 Now, the Plaintiffs in this case -- it got a
11:32:57 15 little bit confusing on one of those slides, but the
11:33:00 16 Plaintiffs in this case are five companies that actually
11:33:03 17 bought these patents from other companies.

11:33:06 18 So we saw a slide with some patents on it, and the
11:33:09 19 other companies, they aren't a part of this lawsuit. So
11:33:13 20 Samsung, when you saw those names on the patents,
11:33:16 21 Panasonic, and LG, they are not parties to this lawsuit.

11:33:20 22 Now, I got a kick out of Ms. Scott, Juror No. 18,
11:33:29 23 saying that she'd always been able to get out of service.
11:33:33 24 But I'm going to tell you, I think this case is going to be
11:33:36 25 really interesting. I even -- one of the jurors I can't

11:33:39 1 recall said this sounds a little boring. But what I'll
11:33:42 2 tell you is you're going to get to see in this case kind of
11:33:45 3 under the hood of -- of Apple products, including iPhones.
11:33:48 4 And you'll see the inner workings of these products.

11:33:51 5 So an iPhone contains hundreds of components and a
11:33:56 6 bunch of chips. And in this case, the features that are
11:34:00 7 being accused are in one of those tiny little chips, and
11:34:04 8 the chip is called a baseband chip. And a baseband chip is
11:34:08 9 very common. It's actually in every cell phone in the
11:34:13 10 world now. And I see -- I see some jurors shaking their
11:34:17 11 heads.

11:34:17 12 Baseband chips basically allow the cell phone to
11:34:22 13 talk with the cellular network, the networks like AT&T and
11:34:22 14 Verizon that Juror No. 10 is familiar with.

11:34:26 15 You're going to learn that over the years, that
11:34:28 16 this little bitty baseband chip, the component part of the
11:34:32 17 phones and products being accused, Apple has been buying
11:34:35 18 those chips from two companies. There are two companies
11:34:38 19 out in California. Many of you probably have heard about
11:34:40 20 them, Intel and Qualcomm.

11:34:43 21 We also heard something from Plaintiffs' counsel
11:34:47 22 about the LTE standard, and he had a few questions for some
11:34:51 23 of you about standards.

11:34:52 24 You're not going to be asked in this case to
11:34:56 25 compare Plaintiffs' patents to the standard. What you will

11:35:03 1 be asked to compare is the patent claims to these little
11:35:06 2 baseband chips that are accused.

11:35:07 3 His Honor played a video about patents, and you
11:35:10 4 heard, to infringe the patent, the Plaintiffs need to have
11:35:14 5 a product or process that meets every requirement or every
11:35:18 6 word of the patent claims.

11:35:23 7 And I'll tell you, for those of you, again, lucky
11:35:27 8 enough to serve, Apple is going to bring both many, many
11:35:30 9 documents and many witnesses from Apple and expert
11:35:34 10 witnesses, as well, to present -- to present you all
11:35:38 11 evidence, that those baseband chips and its products, they
11:35:43 12 use a very -- a very, very different approach than
11:35:45 13 Plaintiffs' patents.

11:35:47 14 Now, anybody can make an accusation, and I'm
11:35:55 15 not -- I'm not -- I'm not picking at that. They have every
11:35:58 16 right. And anyone can file a lawsuit. We've all seen --
11:36:03 17 we've all seen some of that in the news. But you have to
11:36:07 18 back up your claims.

11:36:08 19 And so I always start when I'm visiting with
11:36:11 20 people in cases like this, I always start with what I call
11:36:14 21 my "where there's smoke, there's fire" question.

11:36:17 22 And I'm going to start with Mr. Young.

11:36:20 23 Mr. Young, do you think that just because -- and
11:36:25 24 I'll represent to you this case has been on file for
11:36:27 25 several months, many months. Do you think that because a

11:36:31 1 case has been on file for many months and we're all
11:36:34 2 gathered here, there are good lawyers on the Plaintiffs'
11:36:37 3 side, good lawyers on my side, do you think, gosh, you
11:36:41 4 know, where there's smoke there's fire, there must be
11:36:45 5 something to this litigation?

11:36:46 6 JUROR YOUNG: I'm not even sure yet.

11:36:50 7 MS. SMITH: Okay.

11:36:51 8 JUROR YOUNG: You know, I'm just not ready to
11:36:54 9 answer a question like that. I need to hear a little bit
11:36:56 10 more.

11:36:56 11 MS. SMITH: You'd need to hear the evidence; is
11:36:58 12 that right?

11:36:59 13 JUROR YOUNG: Yes.

11:37:00 14 MS. SMITH: And so you don't come in thinking
11:37:02 15 because I'm the Defendant, that others gosh, there must be
11:37:05 16 something to this?

11:37:06 17 JUROR YOUNG: I'm saving that for later.

11:37:08 18 MS. SMITH: Thank you, thank you, sir.

11:37:11 19 Ms. Blum, how do you feel about it? Do you feel,
11:37:16 20 Ms. Blum, that Apple is here in this courtroom, lots of
11:37:19 21 court staff, lots of lawyers, there must be something to
11:37:22 22 this?

11:37:23 23 JUROR BLUM: I don't agree with that because
11:37:25 24 everybody can say something, and I relate it to things like
11:37:33 25 in my life. People can say things, but then when you hear

11:37:36 1 the other side of the story or both sides of the story, it
11:37:39 2 doesn't add up. So evidence is very key to your -- get
11:37:42 3 your own opinion.

11:37:43 4 MS. SMITH: Thank you, Ms. Blum.

11:37:44 5 Ms. Alexander, do you agree with Ms. Blum and
11:37:51 6 Mr. Young?

11:37:53 7 JUROR ALEXANDER: Yes, I do.

11:37:53 8 MS. SMITH: Okay. Anyone on the other -- do you
11:37:55 9 have anything else to say? Okay. I apologize.

11:37:57 10 Anyone else on the first row that disagrees with
11:38:00 11 these three jurors, that thinks, well, you know, you know,
11:38:03 12 there must be something to this because it's a big
11:38:05 13 courthouse and the case has been on file for a while, there
11:38:09 14 must be something to it?

11:38:11 15 Ms. Deornellis -- did I get that -- you were
11:38:15 16 Folsom but now you're Deornellis, did I get that correctly?

11:38:17 17 JUROR FOLSOM: Deornellis.

11:38:19 18 MS. SMITH: I apologize. Do you have any thoughts
11:38:20 19 on this issue?

11:38:23 20 JUROR FOLSOM: I mean, I guess I agree with them.
11:38:26 21 We really need to know what's going on more in depth until
11:38:30 22 we decide anything really, or side, you know.

11:38:33 23 MS. SMITH: You want to hear the evidence?

11:38:35 24 JUROR FOLSOM: Yeah.

11:38:36 25 MS. SMITH: And, Ms. Newsom, do you agree with

11:38:39 1 Ms. Deornellis, just by raising your hand.

11:38:43 2 JUROR NEWSOM: Yes.

11:38:44 3 MS. SMITH: Thank you, ma'am. Thanks.

11:38:44 4 All right. Anybody in the other rows, and I'll
11:38:46 5 tell you this morning your likelihood of being chosen as a
11:38:50 6 juror increases the closer you get because we'll have eight
11:38:54 7 jurors, and that's kind of the way the system works. So
11:38:57 8 I'll be focusing on the first three or four rows today, but
11:39:01 9 I'm anxious to hear from all of you, of course.

11:39:02 10 Is there anyone that disagrees with the folks on
11:39:06 11 the first row that thinks, you know, there's -- I mean,
11:39:08 12 there's got to be something to this case just by virtue of
11:39:12 13 everyone being gathered here in the courthouse? Raise your
11:39:17 14 hand.

11:39:18 15 All right. Juror No. 27, Mr. Beasley. Tell me
11:39:25 16 what's on your mind.

11:39:26 17 JUROR BEASLEY: I don't necessarily think that one
11:39:28 18 party is guilty or not, but I don't think the Plaintiff
11:39:31 19 would be careless enough to bring the case if they didn't
11:39:35 20 think that something was being infringed upon.

11:39:37 21 MS. SMITH: Okay. And, Mr. Beasley, I'm going to
11:39:39 22 ask you to hold the mic still.

11:39:42 23 JUROR BEASLEY: Okay.

11:39:42 24 MS. SMITH: You have not heard any of the evidence
11:39:44 25 yet, but you still kind of have that feeling that, you

11:39:46 1 know, the Defendant is probably starting out a little bit
11:39:50 2 behind the Plaintiff in this case; is that correct?

11:39:53 3 JUROR BEASLEY: I don't know if I would put it
11:39:54 4 quite like that, but I just -- I don't know, I just look at
11:39:58 5 everybody up there, and I'm pretty sure that they think
11:40:02 6 that something is wrong. And so that's where I stand on
11:40:04 7 it, too. Kind of skeptical a little bit.

11:40:07 8 MS. SMITH: Okay. Thank you for your honesty,
11:40:09 9 sir. I appreciate it.

11:40:16 10 Now, I'm going to switch to a different topic.
11:40:21 11 Jury instructions. So in these patent cases you're going
11:40:24 12 to get some jury instructions at the end of the case from
11:40:26 13 His Honor, and these could be 20 pages or 30 pages long.
11:40:30 14 Sometimes, at the end of the case, Judge will read the jury
11:40:32 15 instructions to you, and it can take him an hour to read
11:40:35 16 them.

11:40:35 17 So -- and he'll, of course, give you your own
11:40:42 18 copy. I'm interested in putting you guys in two categories
11:40:45 19 of persons. The first category I'll call detailed
11:40:50 20 oriented. Those are people that when I just introduced the
11:40:52 21 idea that you're going to get 30 pages of instructions,
11:40:56 22 they say, all right, I'm ready to dive in. You're a person
11:40:59 23 that buys a product, you read the owner's manual, you read
11:41:02 24 the instructions, things of that nature.

11:41:05 25 Second group of people, big picture people. May

11:41:09 1 not always read the manual when you buy a product. May
11:41:12 2 give it to someone else in the household to take care of,
11:41:12 3 may not read it at all, but you don't sweat the details.
11:41:16 4 You're kind of a big picture person.

11:41:19 5 We need both kinds of people in the world. If we
11:41:22 6 had all big picture people, we'd miss some of the details,
11:41:27 7 and if we had all detail-oriented people, we wouldn't get a
11:41:31 8 whole lot done.

11:41:33 9 So there's no wrong answer here. But what I'm
11:41:33 10 going to do is I'm going to go down the rows. Let's start
11:41:34 11 with Juror No. 7 because I don't think we've heard much
11:41:39 12 from you, sir. That is Mr. Jones. And just tell me what
11:41:44 13 category you fall in, are you more detail oriented or big
11:41:49 14 picture?

11:41:50 15 JUROR RICKY JONES: I believe I'm more detail
11:41:51 16 oriented. I'm retired from AT&T as an engineer, so I know
11:41:53 17 the rules, I know the schematics, and it needs to fit that
11:41:58 18 criteria.

11:41:59 19 MS. SMITH: Thank you, sir.

11:42:02 20 Juror No. 8, let's hear from you. Mr. Bailey?

11:42:06 21 JUROR BAILEY: I'd say definitely big picture. I
11:42:09 22 don't read much into the small lines. If it don't turn
11:42:13 23 out, it just don't work. I don't really read about it.

11:42:17 24 MS. SMITH: Thank you, sir.

11:42:18 25 Ms. McKnight?

11:42:20 1 JUROR MCKNIGHT: I would say I'm more detailed.

11:42:22 2 MS. SMITH: Okay. Thank you, ma'am. You're --
11:42:24 3 you're one that's going to probably dive into those 30
11:42:26 4 pages and read them pretty closely?

11:42:28 5 JUROR MCKNIGHT: Uh-huh.

11:42:29 6 MS. SMITH: Thank you, ma'am.

11:42:30 7 All right. We've heard a little bit from
11:42:36 8 Mr. Snyder and Ms. Harley -- Mr. -- let's see,
11:42:40 9 Mr. Williams, which category do you fall in?

11:42:43 10 JUROR WILLIAMS: I would be a detail guy.

11:42:48 11 MS. SMITH: Okay. And is that -- you own a
11:42:51 12 construction company; is that right?

11:42:53 13 JUROR WILLIAMS: Yes, I do.

11:42:53 14 MS. SMITH: So you have to pay attention to the
11:42:53 15 details in your work?

11:42:55 16 JUROR WILLIAMS: But then I look at the big
11:42:57 17 picture, too.

11:42:58 18 MS. SMITH: Okay. Okay. So a little balance
11:43:01 19 of -- a little bit of both?

11:43:02 20 JUROR WILLIAMS: It's a 50/50 deal.

11:43:06 21 MS. SMITH: All right. Thank you, sir.

11:43:07 22 Let's see, I'm having trouble -- may I -- may I
11:43:13 23 look at a number, Your Honor?

11:43:15 24 THE COURT: Certainly.

11:43:15 25 MS. SMITH: Thank you.

11:43:16 1 Behind No. 7, ma'am -- I can't see your number, I
11:43:20 2 apologize.

11:43:21 3 JUROR ACHTERHOF: 14.

11:43:22 4 MS. SMITH: 14. We haven't heard much from you.

11:43:26 5 Which category would you put yourself in?

11:43:28 6 JUROR ACHTERHOF: Big picture.

11:43:29 7 MS. SMITH: Big picture. And why is that?

11:43:32 8 JUROR ACHTERHOF: You just get bogged down in
11:43:34 9 details a lot of times. I'd rather just do what I have to
11:43:37 10 do and get it done.

11:43:38 11 MS. SMITH: Thank you, ma'am. Appreciate it.

11:43:42 12 Now, for those of you that I didn't individually
11:43:45 13 question, let me have a showing of hands of all the big
11:43:48 14 people in the room.

11:43:50 15 All right. Juror No. 24, as well.

11:43:53 16 All right. Thank you.

11:43:54 17 Now, you heard a good bit from Plaintiffs' counsel
11:44:01 18 already and from Judge about the burden of proof in this
11:44:03 19 case. And Plaintiffs are the ones that are going to have
11:44:08 20 the burden of proof on infringement. And that means if
11:44:12 21 Plaintiffs don't meet their burden, that Apple doesn't have
11:44:16 22 to do a thing, and it wins. But I can promise you, Apple
11:44:20 23 is going to do a whole lot. We're going to bring you
11:44:24 24 witnesses and mountains of evidence.

11:44:25 25 Is there anyone that thinks, you know, as a

11:44:30 1 Defendant, Apple should have to have some -- should have
11:44:32 2 that burden? It's not -- it's not quite fair that the
11:44:37 3 Plaintiff has to have the burden of proof on infringement.

11:44:40 4 Anybody, by a showing of hands, that thinks that
11:44:42 5 that's just not quite fair?

11:44:44 6 Okay. Does anyone think -- does anyone think, you
11:44:53 7 know, filing this lawsuit -- filing this lawsuit is enough?
11:44:56 8 Plaintiff has put forth its allegations and -- and, you
11:45:00 9 know, now it's Apple's turn to show that they don't
11:45:03 10 infringe? Anyone have that thought?

11:45:07 11 All right. Ms. Feltner?

11:45:13 12 JUROR FELTNER: Uh-huh.

11:45:14 13 MS. SMITH: Let me hear what you have to say about
11:45:16 14 this question.

11:45:17 15 JUROR FELTNER: Will you repeat it again?

11:45:21 16 MS. SMITH: Of -- of course. Of course.

11:45:22 17 So Plaintiff has the burden of proof in this case
11:45:24 18 to prove infringement. And if they don't meet their
11:45:27 19 burden, Apple actually doesn't have to do anything, and it
11:45:29 20 would win. Do you find that to be fair?

11:45:34 21 JUROR FELTNER: I think you need to hear from both
11:45:37 22 sides and see what each side has to offer or to prove --

11:45:43 23 MS. SMITH: Of course.

11:45:44 24 JUROR FELTNER: -- before you can judge one way or
11:45:46 25 the other.

11:45:48 1 MS. SMITH: Understood. Understood. Understand.

11:45:52 2 Now, on that note of meeting their burden on
11:45:57 3 infringement, Plaintiffs are going to have to prove every
11:46:00 4 single requirement of the patent -- of the patent at issue
11:46:06 5 that it's met to find infringement. And I see this a
11:46:10 6 little bit like a game of bingo sometimes. If you get
11:46:15 7 b-i-n-g, that doesn't get you there. You have to get
11:46:18 8 b-i-n-g-o. Close is not good enough.

11:46:27 9 By a showing of hands, is everybody prepared to
11:46:31 10 hold Plaintiff to its burden to prove that every single
11:46:34 11 requirement of the patents are met? Is everyone prepared
11:46:37 12 to do that?

11:46:41 13 If you'd keep your hands up, I -- see if I'm
11:46:41 14 missing any.

11:46:47 15 Juror No. 8, you don't have your hand up. You do
11:46:51 16 now. Okay. Okay. Thank you. Thank you.

11:46:59 17 I want to talk to you a little bit about a concept
11:47:02 18 called invalidity. One of the questions, as Plaintiffs'
11:47:05 19 counsel mentioned, that you'll be asked if you serve on
11:47:07 20 this panel is whether the patents Plaintiffs purchased are
11:47:12 21 valid in light of the arguments that they're going to make
11:47:14 22 in this case. And you heard something about invalidity in
11:47:18 23 His Honor's video.

11:47:18 24 Was anybody out there surprised when you showed up
11:47:22 25 today to learn that as a juror, you'll be asked to

11:47:27 1 determine if a patent is valid or invalid?

11:47:30 2 Juror No. 3, Ms. Alexander. Tell me a little bit
11:47:37 3 about that. Have you ever -- have you ever had any
11:47:40 4 dealings with the Patent and Trademark Office?

11:47:42 5 JUROR ALEXANDER: I have not, and I know nothing
11:47:44 6 about patents.

11:47:45 7 MS. SMITH: All right.

11:47:46 8 JUROR ALEXANDER: So I'm surprised that I get that
11:47:48 9 responsibility.

11:47:48 10 MS. SMITH: Well, it is a big responsibility, so
11:47:50 11 my next question -- you know it's coming -- how do you feel
11:47:54 12 about that responsibility?

11:47:55 13 JUROR ALEXANDER: I've taken on lots of
11:47:58 14 responsibilities in my life. I can take this one on, too.

11:48:00 15 MS. SMITH: No hesitation and if the evidence
11:48:00 16 supports it, finding a patent invalid?

11:48:07 17 JUROR ALEXANDER: Yeah, I can do that.

11:48:10 18 MS. SMITH: Thank you, ma'am.

11:48:12 19 Anyone else in the room -- that was giving some
11:48:14 20 feedback. Anybody else in the room that was a little bit
11:48:14 21 surprised that it was going to be one of your
11:48:17 22 responsibilities to potentially invalidate a patent --
11:48:22 23 invalidate a patent if the evidence supports it?

11:48:27 24 Juror No. 18, Ms. Scott, did you understand before
11:48:32 25 coming here today and watching the patent video that that

11:48:35 1 would be your role in -- as a juror in a patent case?

11:48:39 2 JUROR SCOTT: I -- I was kind of figuring it out a
11:48:43 3 little bit.

11:48:43 4 MS. SMITH: Okay. And -- and how do you feel
11:48:45 5 about stepping into that role?

11:48:47 6 JUROR SCOTT: Kind of uncomfortable, to be honest.

11:48:50 7 MS. SMITH: Okay. Would you be more comfortable
11:48:54 8 knowing that both sides are -- are going to bring experts
11:48:58 9 and lots of documents and other witnesses to help you do
11:49:02 10 that job?

11:49:04 11 JUROR SCOTT: A little.

11:49:06 12 MS. SMITH: Okay. Thank you, ma'am.

11:49:08 13 Is there anyone else out there that -- that feels
11:49:14 14 like Ms. Scott? You know, you understand that that would
11:49:17 15 be your role if you serve on this jury, but you're just a
11:49:22 16 little bit uncomfortable? Some of you said, you know,
11:49:27 17 we're not very tech savvy, you don't know much about how
11:49:31 18 your phone works. Is there anyone that's just slightly
11:49:34 19 hesitant about sitting on a jury where you may be asked to
11:49:37 20 invalidate a patent?

11:49:40 21 Juror No. 34?

11:49:49 22 JUROR TRUDEAU: I don't personally know a whole
11:49:52 23 lot about patents and the process. Basically, what we
11:49:56 24 learned here today is all I know. And while I personally
11:50:02 25 feel that doing that would require a bit more know-how to

11:50:06 1 be more comfortable in doing that, I'm -- if I'm chosen,
11:50:09 2 I'm still going to do my best to fill the role as well as I
11:50:14 3 can.

11:50:14 4 MS. SMITH: And we appreciate that. Thank --
11:50:16 5 thank you, sir.

11:50:17 6 Ms. Harley?

11:50:26 7 JUROR HARLEY: Yes, ma'am.

11:50:27 8 MS. SMITH: Now, Plaintiffs' counsel talked to you
11:50:29 9 about the tree cutting that happened on your land.

11:50:31 10 JUROR HARLEY: Yes.

11:50:32 11 MS. SMITH: You knew I'd probably come back to you
11:50:36 12 on this one, right? I actually like that -- I like to talk
11:50:39 13 about this, because this isn't unlike a patent case.
11:50:42 14 Patents have really precise boundaries, just like your
11:50:46 15 property had precise boundaries. Did you have a -- did you
11:50:50 16 have a fence up on your property?

11:50:51 17 JUROR HARLEY: It was partially, yes.

11:50:53 18 MS. SMITH: Okay. And the part that wasn't
11:50:54 19 fenced, you knew with certainty what was yours and what
11:50:58 20 wasn't? You knew where your boundaries were, didn't you?

11:51:01 21 JUROR HARLEY: Oh, absolutely.

11:51:01 22 MS. SMITH: Okay. And it wouldn't be right to --
11:51:03 23 after these trees were cut, it wouldn't have been right to
11:51:06 24 try to claim more than what was yours. You only -- you
11:51:09 25 only claimed what was fenced in, your own boundary?

11:51:13 1 JUROR HARLEY: Exactly.

11:51:14 2 MS. SMITH: Okay. Thank you, ma'am.

11:51:17 3 And what I think we'll see -- we'll talk about
11:51:19 4 more of this concept in this case, but I think you'll see
11:51:20 5 that it's no different in patent cases, that a patent owner
11:51:22 6 can't claim more than they actually own. And they can't
11:51:29 7 try to stretch their patent to take in things that they
11:51:33 8 don't own.

11:51:34 9 THE COURT: Let's ask questions.

11:51:36 10 MS. SMITH: Yes, Your Honor.

11:51:36 11 Let's talk about Apple. And Plaintiffs' counsel
11:51:43 12 started to -- to get some feedback on Apple earlier. I --
11:51:48 13 I'll tell you, I was an Apple customer long before this
11:51:50 14 case started. I've had a really great experience. The --
11:51:55 15 the times that my experience isn't great is mostly user
11:51:59 16 error. But I've read your questionnaires, and I know
11:52:01 17 everybody's experience isn't -- isn't exactly like mine.

11:52:05 18 So we'll -- we'll take this in steps. For those
11:52:09 19 of you that currently own an Apple product, raise your
11:52:13 20 hands.

11:52:13 21 Now, keep your hands up if you currently own a
11:52:16 22 product and have any complaints about the product.

11:52:21 23 All right. Ms. Blum, tell me a little bit about
11:52:24 24 that. I'm representing Apple. And -- and this is an
11:52:27 25 important case, and so any -- any criticism or complaint

11:52:32 1 you have about your product, I'd love to hear it.

11:52:39 2 JUROR BLUM: I know how it works, but before I had
11:52:41 3 a newer iPhone -- when I had an old iPhone, they had came
11:52:41 4 out with like three different versions after that, and my
11:52:44 5 old iPhone started working because it won't allow you to
11:52:47 6 update to the new -- like the new iOS. And so then I,
11:52:51 7 like, had to go buy a new phone, so -- and iPhones are
11:52:54 8 expensive, but I also like iPhones, so I wanted to get an
11:52:57 9 iPhone. So I had to wait until I could afford it.

11:53:01 10 But it just didn't work so I couldn't make calls,
11:53:03 11 I couldn't text after you couldn't update to the new iOS.
11:53:06 12 And so I really just had a phone that didn't do anything
11:53:10 13 but I was still paying a bill.

11:53:12 14 And then I always don't have service, and that's
11:53:14 15 not with Apple, but Apple -- like my grandparents have an
11:53:19 16 Android and I have an Apple, and they get service more
11:53:24 17 places than Apple does. And I don't know why but they can
11:53:27 18 always call when I can't, so...

11:53:28 19 MS. SMITH: Well, I feel your pain on the service,
11:53:30 20 because that might not be an Apple issue. I can't drive
11:53:34 21 from -- from my -- my office to my house in Jefferson and
11:53:37 22 not drop a signal three or four times.

11:53:40 23 But putting a pin in that, knowing that you've had
11:53:44 24 these issues with Apple -- and they sound like real issues
11:53:47 25 that have impacted you financially, as well -- I want to

11:53:50 1 make sure I'm not starting out a little bit behind in this
11:53:53 2 case. I'm going to stand up and say I represent Apple and
11:53:55 3 this is Apple's position, and every time I do that, I don't
11:53:58 4 want you thinking, gosh, you know, I'm frustrated with
11:54:04 5 them.

11:54:05 6 JUROR BLUM: No.

11:54:06 7 MS. SMITH: So I can start out kind of on an even
11:54:09 8 playing field?

11:54:10 9 JUROR BLUM: Yes.

11:54:11 10 MS. SMITH: Thank you, Ms. Blum.

11:54:13 11 I had a bunch of hands. Let's see, who else has
11:54:15 12 an Apple product and may have a complaint about that
11:54:18 13 product?

11:54:18 14 Juror No. 17, Mr. Gonzalez, tell me what's going
11:54:22 15 on with your Apple products.

11:54:24 16 JUROR GONZALEZ: All right. Well -- all right. I
11:54:28 17 don't have an iPhone anymore, and when I did, it wasn't
11:54:32 18 actually hooked up to service. I was a minor at the time.
11:54:34 19 And that was kind of -- would have been on my parents'
11:54:38 20 bills. So they really weren't keen on that.

11:54:42 21 What I do have are some Apple iPads, and while I
11:54:45 22 generally like them, there's one thing that I don't
11:54:50 23 particularly like. I'm very big on reverse compatibility,
11:54:57 24 and there's a -- there's many apps that I found that do not
11:55:02 25 work after updates because they have been updated to the

11:55:06 1 newer system.

11:55:07 2 Meanwhile, like she was talking about how some of
11:55:11 3 them they only get to update so far, which means that
11:55:15 4 they're not forward compatible either.

11:55:18 5 I have actually got three iPads with different
11:55:22 6 generations that I'm kind of holding on to for (a) a little
11:55:25 7 bit more memory, and (b) a little bit of holding on to some
11:55:28 8 of the stuff that I actually used from the past. But
11:55:31 9 there's also some of that I can't get back because I
11:55:33 10 already updated past that. I do not like that. I
11:55:36 11 understand the security measures, I want my stuff back.

11:55:40 12 MS. SMITH: Well, first of all, I'm glad to hear
11:55:42 13 that you continue buying Apple products. Thank you for
11:55:46 14 that.

11:55:46 15 Is there anything about those, the reverse
11:55:49 16 compatibility issue or anything you mentioned that might
11:55:53 17 cause Apple to start out a little bit behind in this case
11:55:56 18 because of your frustrations with your Apple's products?

11:55:59 19 JUROR GONZALEZ: I don't see how the frustrations
11:56:00 20 can connect to patent cases.

11:56:02 21 MS. SMITH: Thank you, sir. I appreciate that.

11:56:04 22 All right. Anybody else on -- on this -- on my
11:56:09 23 right side on this half of the room that has a current
11:56:13 24 Apple product and has a complaint regarding that product?

11:56:16 25 What about the other side of the room?

11:56:18 1 All right. Second category of people. Let me
11:56:25 2 see, Ms. Powell, Juror No. 21 -- Mr. Powell, I apologize.
11:56:31 3 Do you currently have an Apple product, or have you had a
11:56:33 4 product in the past?

11:56:35 5 JUROR POWELL: I haven't owned an Apple product in
11:56:40 6 a decade.

11:56:41 7 MS. SMITH: Well, you're in the next category of
11:56:44 8 people I'd like to visit with, then. I read your
11:56:47 9 questionnaire, and it said you're not a fan.

11:56:51 10 JUROR POWELL: No.

11:56:52 11 MS. SMITH: Tell me about that.

11:56:54 12 JUROR POWELL: Between when I did have Apple
11:56:56 13 products, I had to jail break it to use it how I wanted to
11:57:01 14 and which take me probably -- but then, you know, those
11:57:07 15 stuff with Foxconn -- was it Foxconn -- and factories in
11:57:11 16 China and the environment, so morally on that standpoint.
11:57:15 17 And then like the recent rights to repair stuff with Apple
11:57:19 18 and independent technicians that can repair things having
11:57:23 19 to fight Apple to get the prints to fix things.

11:57:28 20 MS. SMITH: So -- so I am -- I am sorry to hear
11:57:31 21 that. But what I will -- this is -- this is a -- this
11:57:35 22 sounds like you've had some issues with Apple for quite a
11:57:38 23 few years; is that correct?

11:57:40 24 JUROR POWELL: That'd be fair to say, yes.

11:57:42 25 MS. SMITH: Okay. And you've consistently had

11:57:45 1 kind of some bad experiences with Apple?

11:57:47 2 JUROR POWELL: Yes.

11:57:48 3 MS. SMITH: And so in this case, Apple is the
11:57:50 4 Defendant. And so in your mind if you were sitting on this
11:57:53 5 case, you might be a juror -- better juror in another type
11:57:57 6 of case; would you agree with that?

11:57:59 7 JUROR POWELL: Yes.

11:58:00 8 MS. SMITH: Because you probably, while you're
11:58:02 9 generally no doubt fair in life, you can't be fair to
11:58:06 10 Apple, can you?

11:58:07 11 JUROR POWELL: That would be -- yeah, that'd be
11:58:10 12 correct, yes.

11:58:10 13 MS. SMITH: Thank you, sir, I appreciate that.

11:58:12 14 Does anyone else, like Mr. Powell, you don't
11:58:20 15 currently own an Apple product, but you have owned an Apple
11:58:24 16 product in the past?

11:58:28 17 All right. Mr. Young and Ms. Alexander, do you
11:58:31 18 need to share any -- any issues or complaints with the past
11:58:35 19 ownership with me that you think might affect this lawsuit?

11:58:38 20 Mr. Young, I see you nodding your head no?

11:58:43 21 JUROR YOUNG: No.

11:58:43 22 MS. SMITH: And Ms. Alexander?

11:58:46 23 JUROR BLUM: No.

11:58:46 24 MS. SMITH: No. Thank you.

11:58:47 25 Now, Plaintiffs' counsel put up a number,

11:58:51 1 \$506 million, and I want to talk to you about that real
11:58:54 2 quick.

11:58:54 3 My son plays chess, and he's really good, but he's
11:59:02 4 not really good at sports. And so last year he was
11:59:05 5 determined to play football. We played eight-year-old flag
11:59:09 6 football, and there were -- there were about seven teams,
11:59:12 7 and -- and they came in 7th place. And we went to Chuck E.
11:59:17 8 Cheese's, and he got a trophy about half my height because
11:59:22 9 everybody got a trophy.

11:59:23 10 And that's fine with eight-year-olds. But that's
11:59:26 11 not how litigation works. And so my next question here is
11:59:35 12 this: Does anyone agree with the statement a party who
11:59:39 13 files a lawsuit is usually entitled to at least some of the
11:59:43 14 money they ask for?

11:59:46 15 Ms. Blum, you're shaking your head no.

11:59:50 16 Ms. Alexander, do you agree with Ms. Blum?

11:59:54 17 JUROR ALEXANDER: I do.

11:59:55 18 MS. SMITH: Okay. Ms. Achterhof?

12:00:02 19 JUROR ACHTERHOF: Achterhof.

12:00:02 20 MS. SMITH: Achterhof. I apologize. May I hear
12:00:05 21 from you on this?

12:00:05 22 THE COURT: Let's wait until we get the
12:00:07 23 microphone.

12:00:09 24 JUROR ACHTERHOF: I think it would all depend on
12:00:15 25 what it was. Prob -- some people will sue over just

12:00:19 1 nothing, but there's usually something, I would think -- if
12:00:22 2 they're taking on a company as big as Apple, I would say
12:00:25 3 they probably have something.

12:00:26 4 MS. SMITH: And so you haven't heard any of the
12:00:28 5 evidence in the case yet --

12:00:30 6 JUROR ACHTERHOF: Huh-uh.

12:00:31 7 MS. SMITH: -- but you're already starting to kind
12:00:33 8 of lean towards Plaintiffs because you're thinking, well,
12:00:36 9 if they made it this far, you know, they deserve -- maybe
12:00:40 10 not all 506 million, but some money?

12:00:43 11 JUROR ACHTERHOF: It's possible, I mean, it would
12:00:47 12 depend on the evidence, but I would say that they probably
12:00:49 13 wouldn't be ignorant enough to take on someone like Apple
12:00:54 14 without something to back it up.

12:00:56 15 MS. SMITH: Thank you, ma'am. I appreciate that.

12:00:58 16 Ms. Brian, I have not heard a lot from you. Tell
12:01:02 17 me a little bit about your thoughts on this issue. Do you
12:01:07 18 think that because -- you know, because someone files a
12:01:09 19 lawsuit, that they might not be entitled to \$500 million,
12:01:14 20 but they should get something just for filing a lawsuit?

12:01:17 21 JUROR BRIAN: Well, with my background, obviously,
12:01:20 22 evidence comes into play a lot. I -- I am not a fan of
12:01:27 23 technology.

12:01:27 24 MS. SMITH: Okay.

12:01:29 25 JUROR BRIAN: It's just -- I don't like video

12:01:31 1 games, I don't -- I don't like any of that stuff. I've
12:01:34 2 been married to two phones, two Apple phones for about 12
12:01:39 3 years, and so I get very frustrated a lot.

12:01:42 4 MS. SMITH: Okay. Any about that -- anything
12:01:45 5 about that frustration, because I'm standing up in front of
12:01:48 6 you in a suit involving \$506 million for -- for the
12:01:52 7 Plaintiffs' side, and you don't necessarily like
12:01:56 8 technology. Does that cause me to kind of start from
12:01:59 9 behind because I work for a technology company?

12:02:02 10 JUROR BRIAN: I don't think necessarily behind,
12:02:04 11 but I -- yeah, I mean, I just don't like technology across
12:02:10 12 the board. I'm just old school, and, I mean, in my office,
12:02:14 13 we do paper, we don't do everything electronically, so...

12:02:18 14 MS. SMITH: And -- and you talked about your
12:02:20 15 office. You have an insurance agency; is that correct?

12:02:23 16 JUROR BRIAN: Yes.

12:02:24 17 MS. SMITH: And when you worked for Judge Parish,
12:02:29 18 again, tell me the relation? Did you report directly to
12:02:31 19 her?

12:02:33 20 JUROR BRIAN: No, I worked for the probation
12:02:35 21 department. So she was my ultimate boss, but like I had a
12:02:38 22 boss in between her.

12:02:39 23 MS. SMITH: Okay. Okay. And how long did you
12:02:41 24 all -- did you -- how long was she your ultimate boss?

12:02:44 25 JUROR BRIAN: About seven-and-a-half years.

12:02:46 1 MS. SMITH: All right. Thank you, ma'am,
12:02:51 2 appreciate it.

12:02:51 3 Now, let's see, Mr. Huddleston, we haven't heard
12:03:02 4 much from you today. Mr. Huddleston, how do you feel about
12:03:06 5 that statement that a party that files a lawsuit should be
12:03:11 6 entitled to at least some money?

12:03:13 7 JUROR HUDDLESTON: I really don't know. I will
12:03:16 8 say that -- that I guess they -- they did have enough
12:03:21 9 complaint to file a lawsuit against y'all, but back to one
12:03:24 10 of those other questions on the preponderance of the
12:03:29 11 evidence --

12:03:29 12 MS. SMITH: Yes, sir.

12:03:30 13 JUROR HUDDLESTON: -- in my opinion, then they
12:03:32 14 have to bring it to prove -- to get that amount of money.

12:03:35 15 MS. SMITH: So you'd wait to hear all the evidence
12:03:38 16 before making up your mind?

12:03:40 17 JUROR HUDDLESTON: Yeah.

12:03:41 18 MS. SMITH: And you'd make the Plaintiff meet
12:03:43 19 their burden of proof on infringement?

12:03:45 20 JUROR HUDDLESTON: Uh-huh.

12:03:46 21 MS. SMITH: Thank you, sir.

12:03:47 22 I think I saw a couple folks on the panel that
12:03:54 23 worked for Lebus. Okay. On the back row, Juror No. 29.

12:04:02 24 And did I have somebody else that worked for Lebus
12:04:05 25 in here, over in the corner?

12:04:06 1 Did you two know each other before you came in
12:04:09 2 today.

12:04:10 3 JUROR RAMSEY: Yes, we work together every day.

12:04:11 4 MS. SMITH: Okay. What did --

12:04:13 5 JUROR RAMSEY: She works maintenance, I work on
12:04:16 6 the press.

12:04:16 7 MS. SMITH: Okay. All right. How long have you
12:04:18 8 guys been working together?

12:04:20 9 JUROR RAMSEY: We don't work together. She works
12:04:22 10 in a different department.

12:04:23 11 MS. SMITH: Okay. All right.

12:04:23 12 THE COURT: You have five minutes remaining.

12:04:25 13 MS. SMITH: Thank you, Your Honor.

12:04:26 14 Is there anything about that -- that -- that
12:04:28 15 relationship because you know each other from work that if
12:04:31 16 you're two of the eight jurors, you guys would kind of vote
12:04:35 17 together, I would say, just like you work together?

12:04:37 18 JUROR RAMSEY: No.

12:04:38 19 MS. SMITH: No?

12:04:39 20 JUROR RAMSEY: No, ma'am.

12:04:41 21 MS. SMITH: Okay. Thank you.

12:04:41 22 Same question for you, ma'am?

12:04:44 23 JUROR VICK: He has his opinion, I have mine.

12:04:46 24 MS. SMITH: I'd like to know yours, ma'am.

12:04:49 25 JUROR VICK: Well, I haven't heard all the -- you

12:04:52 1 know, to give my opinion, so...

12:04:54 2 MS. SMITH: Okay. Okay. So you can make --
12:04:57 3 you'll have an independent opinion?

12:04:58 4 JUROR VICK: Yes.

12:04:59 5 MS. SMITH: I understand now. Okay. Thank you.

12:05:01 6 Now, Mr. Baxter introduced himself and we heard a
12:05:07 7 lot about his wife who -- who he -- he has in Gilmer. He's
12:05:12 8 joined at counsel table by lead counsel for the Plaintiffs,
12:05:16 9 Mr. Jason Sheasby. I think you're going to hear a lot from
12:05:19 10 Mr. Sheasby in this case, and he's from Los Angeles,
12:05:23 11 California. He's been to this courthouse before.

12:05:25 12 Is anyone familiar with Mr. Sheasby?

12:05:29 13 Okay. Mr. Baxter practices at McKool Smith here
12:05:33 14 in town. His law partner, Ms. Jennifer Truelove, he
12:05:38 15 introduced. Her husband is also a lawyer here in town.
12:05:43 16 His name is Kurt Truelove. Does anybody know the
12:05:47 17 Trueloves?

12:05:48 18 All right. Ms. Hood, you know, I think you're in
12:05:50 19 a lucky spot today. You might not be reached back there.
12:05:53 20 Thank you, though.

12:05:56 21 Mr. Baxter has a legal assistant, her name is
12:06:08 22 Ms. JoAnne Garrett Bayliss. Does anybody know Ms. Bayliss?

12:06:10 23 Ms. Baxter -- Mr. Baxter's brother-in-law and
12:06:14 24 Judge Parish's brother is Todd Parish. Does anybody know a
12:06:20 25 Todd Parish from Gilmer? I knew that was coming. Tell me

12:06:24 1 how you know Todd Parish?

12:06:27 2 JUROR CANNON: Todd Parish graduated -- Todd
12:06:30 3 graduated with one of my sisters, watched him -- watched
12:06:38 4 his son play ball, sit beside in the same area in Buckeye
12:06:42 5 Stadium. Long time. Long time.

12:06:45 6 MS. SMITH: Anything about that relationship that
12:06:48 7 would cause you to kind of lean towards Plaintiffs before
12:06:51 8 you hear the evidence in this case?

12:06:53 9 JUROR CANNON: I'm glad you revisited me --

12:06:56 10 MS. SMITH: Okay.

12:06:57 11 JUROR CANNON: -- because I'm -- I'm -- just
12:07:01 12 truthfully might say that I would think that they would
12:07:04 13 only have taken the case had they thought that they were
12:07:07 14 really going to win and that there was something there.

12:07:10 15 MS. SMITH: And because you have those feelings
12:07:12 16 long before you've heard the evidence in this case, you'd
12:07:15 17 agree you might be a better fit for a different jury?

12:07:17 18 JUROR CANNON: I believe I would.

12:07:19 19 MS. SMITH: And you probably couldn't be fair to
12:07:21 20 Apple on this case?

12:07:25 21 JUROR CANNON: Restate your question.

12:07:26 22 MS. SMITH: You might not -- this -- you might not
12:07:30 23 be able to be fair and put Apple starting in the same place
12:07:35 24 as the Plaintiffs in this case?

12:07:36 25 JUROR CANNON: I would question myself on that.

12:07:38 1 MS. SMITH: Thank you, ma'am. I appreciate that.

12:07:40 2 JUROR CANNON: I'm sorry.

12:07:41 3 MS. SMITH: I appreciate your honesty. I -- I
12:07:44 4 appreciate that.

12:07:47 5 All right. Mr. Snyder, I had a follow-up question
12:07:50 6 for you. You said your dad owned -- has 21 patents; is
12:07:57 7 that correct?

12:07:57 8 JUROR SNYDER: (Nods head affirmatively.)

12:08:00 9 MS. SMITH: All right. In this case it's a little
12:08:03 10 bit different situation because this company bought its
12:08:05 11 patents. But because of the history with your father's
12:08:10 12 patents, would you start out leaning a little bit toward
12:08:13 13 the Plaintiffs in this case before you hear any of the
12:08:15 14 evidence?

12:08:16 15 JUROR SNYDER: I don't think so. Now, my dad
12:08:18 16 worked in the oil industry and created safety valves and
12:08:21 17 things like that for deep sea oil rigs and things like
12:08:24 18 that, but he worked for a company and then created those
12:08:27 19 patents through the company. The company actually, you
12:08:30 20 know, owns those patents.

12:08:30 21 THE COURT: One minute remaining.

12:08:32 22 JUROR SNYDER: So he has the dollar bill, you
12:08:35 23 know, with the patent itself, but that's it.

12:08:36 24 MS. SMITH: Okay. Thank you, sir.

12:08:37 25 Now, Mr. Baxter asked a similar question, and most

12:08:42 1 lawyers end with this question. We don't always know the
12:08:45 2 right questions to ask, and sometimes we can't begin to
12:08:48 3 guess what you would like to tell us. So I have had an
12:08:52 4 opportunity to ask you all many, many questions.

12:08:55 5 Is there anybody sitting out there thinking, you
12:08:57 6 know, if she would just ask me this one last question, I
12:09:01 7 would tell her I might not be the best fit in this case,
12:09:06 8 whether it's you don't want to sit on a patent case or you
12:09:09 9 have an issue with the Plaintiffs' companies or Apple, is
12:09:12 10 there anyone that needs to tell me something?

12:09:14 11 Yes, sir?

12:09:17 12 JUROR HUDDLESTON: I'll be honest with y'all, I --
12:09:20 13 I would be fair if I'm chosen, but this just doesn't
12:09:23 14 interest me at all. I'm kind of like her, just old school
12:09:29 15 even as young as I am. Although I have iPhones, the kids
12:09:33 16 have iPads, I still just -- I'm just -- I'm old at heart, I
12:09:37 17 guess.

12:09:37 18 MS. SMITH: I -- I appreciate your honesty.

12:09:40 19 JUROR HUDDLESTON: But just to be fair, I -- it
12:09:41 20 doesn't interest me at all.

12:09:42 21 MS. SMITH: All right, sir. I appreciate your
12:09:44 22 honesty.

12:09:45 23 And I have two more hands -- three more hands.

12:09:48 24 No. 27?

12:09:50 25 JUROR BEASLEY: Well, I've never personally owned

12:09:53 1 an Apple product, but my wife has one, my brother has one,
12:09:58 2 and they've always had issues with them. And I always
12:10:01 3 thought they were overpriced. And that has always
12:10:03 4 irritated me, and it may skew my judgment. I mean, I
12:10:08 5 wouldn't want it to. I wouldn't like to think it would,
12:10:11 6 but it may.

12:10:11 7 MS. SMITH: Well, you know, do you -- are you
12:10:13 8 telling me you might be a better fit for a case where Apple
12:10:17 9 isn't the Defendant?

12:10:18 10 JUROR BEASLEY: Yes, possibly.

12:10:19 11 MS. SMITH: I appreciate that, sir. Thank you.
12:10:21 12 And I had two final hands up, Your Honor.

12:10:24 13 THE COURT: Well, our time expired -- your time
12:10:28 14 expired about a minute and a half ago. But we'll go ahead
12:10:32 15 and get these two answers.

12:10:32 16 MS. SMITH: Thank you, Your Honor.

12:10:33 17 THE COURT: And then we're done.

12:10:34 18 MS. SMITH: Of course, Your Honor.

12:10:36 19 JUROR TRUDEAU: So I have never personally owned
12:10:38 20 any kind of Apple product in my life, but I have known
12:10:41 21 several people who have. One of my best friends back in
12:10:45 22 high school got a computer to do schoolwork on, play games
12:10:50 23 and stuff on, and had several issues with it, had to do a
12:10:53 24 lot of work on it just to get it to work the way he wanted
12:10:59 25 it to.

12:11:00 1 And when one of his -- one of our other friends
12:11:04 2 was trying to get to the -- to get something similar, he
12:11:08 3 recommended going to someone else, spent roughly two-thirds
12:11:13 4 of what he had spent, and had something out of the box with
12:11:16 5 roughly the same spec -- specifications that just worked
12:11:20 6 better than even what he had gotten from working on it.

12:11:24 7 MS. SMITH: Is there anything about that
12:11:26 8 experience -- in your friend's experience that would cause
12:11:28 9 you to -- to maybe think that Apple is starting a little
12:11:32 10 bit behind in this case?

12:11:34 11 JUROR TRUDEAU: Yes, that, among a lot of the
12:11:36 12 other things I've seen throughout my life.

12:11:39 13 MS. SMITH: Thank you, sir.

12:11:40 14 I'm not sure if we're going to reach that last
12:11:44 15 juror, Your Honor.

12:11:45 16 THE COURT: No, I don't think so.

12:11:46 17 MS. SMITH: Okay.

12:11:46 18 THE COURT: Thank you, Ms. Smith.

12:11:48 19 MS. SMITH: I don't think we'll reach you, ma'am.

12:11:50 20 Thank you, Your Honor.

12:11:51 21 Thank you all.

12:11:53 22 THE COURT: All right. Ladies and gentlemen,
12:11:54 23 there are certain matters I need to discuss with counsel
12:11:58 24 outside of your presence at this time. And since I can't
12:12:02 25 ask you to leave the courtroom and maintain appropriate

12:12:05 1 spacing, I'm going to leave the courtroom. I'm going to
12:12:08 2 retire to the jury room with the court reporter, and I
12:12:13 3 will -- I will have Mr. Baxter and Ms. Smith join me in
12:12:16 4 there. I will go over those matters that I need to take up
12:12:21 5 outside of your presence, then I'll be back on the bench,
12:12:23 6 and we'll go to the next step.

12:12:24 7 This is not going to take a lengthy period of
12:12:27 8 time. I don't expect it to be more than a few minutes. So
12:12:31 9 I'm going to ask you while I'm out of the courtroom just to
12:12:34 10 maintain your seating where you are, and please just bear
12:12:39 11 with me for a few minutes, and I'll be back as soon as
12:12:42 12 possible so that we can continue with the next portion of
12:12:45 13 the process.

12:12:45 14 Mr. Baxter, Ms. Smith, if you'll join me with the
12:12:54 15 court reporter in the jury room.

12:12:55 16 COURT SECURITY OFFICER: All rise.

12:12:57 17 (Bench conference outside the courtroom.)

12:15:43 18 THE COURT: Mr. Baxter, do you have any challenges
12:15:47 19 for cause? Or should I say the Plaintiff, does the
12:15:53 20 Plaintiff have any challenges for cause?

12:15:58 21 MR. BAXTER: No, Your Honor.

12:15:58 22 THE COURT: How about you, Ms. Smith?

12:16:00 23 MS. SMITH: Four, 14, and 21, if we get there,
12:16:09 24 which I don't know if we will.

12:16:12 25 THE COURT: Four, 14, and 21. Okay.

12:16:19 1 MS. SMITH: Do we have excuses? How are we
12:16:24 2 handling this?

12:16:25 3 THE COURT: Excuses?

12:16:26 4 MS. SMITH: Of the people who raised their hands
12:16:29 5 who said they couldn't come for some --

12:16:32 6 THE COURT: If we had scheduling issues. I marked
12:16:35 7 No. 16 as having a scheduling problem.

12:16:37 8 MS. SMITH: Right.

12:16:37 9 THE COURT: And I marked No. 27 as having a
12:16:42 10 scheduling problem, although I don't think we're going to
12:16:45 11 get to 27.

12:16:46 12 MS. SMITH: Thank you, Your Honor.

12:16:47 13 THE COURT: And 37, Ms. Hood, had a scheduling
12:16:49 14 problem, just those three.

12:16:51 15 MR. BAXTER: 16?

12:16:53 16 MS. SMITH: Yes.

12:16:53 17 THE COURT: 16, who has absolutely no interest in
12:16:53 18 what we're doing.

12:16:55 19 MS. SMITH: I'll agree on him.

12:16:55 20 MR. BAXTER: I'm for letting him go, Judge --

12:16:55 21 MS. SMITH: Yeah.

12:17:00 22 MR. BAXTER: -- no matter what his excuse is.

12:17:02 23 THE COURT: Okay. So Defendant is going to
12:17:04 24 challenge for cause 14 --

12:17:09 25 MR. BAXTER: What's the basis on 14?

12:17:11 1 THE COURT: -- 21 and --

12:17:13 2 MS. SMITH: Said the Plaintiff should --

12:17:14 3 THE COURT: -- you said four.

12:17:16 4 MR. BAXTER: -- get some money even if they don't
12:17:21 5 prove their case.

12:17:22 6 THE COURT: Okay. I just want to make sure I've
12:17:22 7 got the right people to bring in here one at a time. I'm
12:17:22 8 going to bring in No. 4 for Defendant's challenge for
12:17:26 9 cause; No. 14 for challenge for cause; No. 16 for a
12:17:34 10 scheduling problem.

12:17:41 11 Now, the next --

12:17:42 12 MR. BAXTER: Maybe, Your Honor, we ought to talk
12:17:44 13 to 15, as well, the one that worked for Judge Parish. I
12:17:49 14 just want to make sure we're all clean on that.

12:17:55 15 THE COURT: You're talking about the probation --
12:17:58 16 former probation officer?

12:18:01 17 MR. BAXTER: Yes, No. 15.

12:18:02 18 THE COURT: You want to challenge her for cause?

12:18:05 19 MR. BAXTER: Yes, sir.

12:18:05 20 THE COURT: Okay. If -- I've got three challenges
12:18:23 21 for cause and one scheduling problem up through No. 20. If
12:18:27 22 I were to grant all of those, that gives you eight strikes
12:18:32 23 combined and eight jurors.

12:18:34 24 I mean, I can bring No. 21 back who Defendants
12:18:41 25 challenge for cause, but I don't see how we reach 21 even

12:18:45 1 if I grant everything you all have raised.

12:18:48 2 MS. SMITH: That's correct, Your Honor.

12:18:49 3 THE COURT: Clearly, he ought to be excused. He
12:18:52 4 was very adamant about his position.

12:18:55 5 MS. SMITH: Yes. It's unfortunate. He was a
12:18:59 6 talker.

12:19:01 7 THE COURT: Do either of you all see a problem
12:19:04 8 with me bringing back 4, 14, 15, and 16 and stopping it
12:19:09 9 there?

12:19:12 10 MS. SMITH: No, Your Honor.

12:19:13 11 THE COURT: I don't.

12:19:14 12 Okay. We need to go back in the courtroom. I'm
12:19:17 13 going to tell the panel what I expect of them and tell them
12:19:21 14 that this is going to take a little longer. I'm going to
12:19:24 15 give them some instructions and the Court Security Officer
12:19:27 16 some instructions. Then we're going to come back in here,
12:19:30 17 and I want both of you all back in here with me. And you
12:19:34 18 don't need to wait for somebody to come get you, just
12:19:39 19 follow me back in here.

12:19:40 20 And then I'm going to have the Court Security
12:19:41 21 Officer bring these venire members in one at a time, and
12:19:45 22 we'll address either the challenge for cause or their
12:19:47 23 scheduling issue. All right?

12:19:48 24 MR. BAXTER: Yes, Your Honor.

12:19:48 25 MS. SMITH: Yes, Your Honor.

12:19:49 1 THE COURT: And I assume you two are comfortable
12:19:52 2 without the rest of your trial team coming back in here?

12:19:54 3 MR. BAXTER: Yes, sir.

12:19:55 4 MS. SMITH: Yes, sir.

12:19:57 5 THE COURT: Okay. We'll do it that way then.

12:19:57 6 MR. BAXTER: They're just in the way.

12:19:57 7 THE COURT: Sorry?

12:19:57 8 MR. BAXTER: They're just in the way.

12:19:59 9 Put that in there.

12:20:01 10 THE COURT: All right. I'll see you -- well,
12:20:03 11 let's all go back in the courtroom together.

12:20:06 12 (Bench conference concluded.)

12:21:02 13 COURT SECURITY OFFICER: All rise.

12:21:03 14 THE COURT: Be seated, please.

12:21:06 15 All right. Ladies and gentlemen, I told you that
12:21:12 16 wouldn't take too long. Thank you for bearing with me.

12:21:14 17 I am going to need to talk with a few of you one
12:21:18 18 at a time outside the presence of the rest of the panel.

12:21:21 19 That means I'm going to go back in the jury room
12:21:26 20 in just a minute. Mr. Baxter, Ms. Smith are going to go
12:21:30 21 with me. Ms. Holmes, the court reporter, is going to go
12:21:33 22 with me. And then I'm going to bring the following members
12:21:35 23 of the panel back one at a time. The Court Security
12:21:38 24 Officer will come and get you and escort you to the jury
12:21:41 25 room where I'll visit with you outside of the presence of

12:21:44 1 the rest of the panel.

12:21:45 2 I'm going to visit with the following folks in the
12:21:49 3 jury room one at a time: Ms. Cannon, No. 4; Ms. Achterhof,
12:21:58 4 No. 14; Ms. Brian, No. 15; and Mr. Huddleston, No. 16.

12:22:05 5 I don't think I'll need to visit with anybody else
12:22:08 6 on the panel separately, other than those four. And,
12:22:13 7 again, I'll do that one at a time.

12:22:16 8 Now, while I'm in the jury room with these other
12:22:19 9 people I've mentioned, I'm going to ask that all of you
12:22:23 10 stay seated. Again, this is part of us maintaining safe
12:22:31 11 distancing.

12:22:31 12 While I'm in the jury room with these folks, the
12:22:35 13 Court Security Officers are going to come and check with
12:22:38 14 you one row at a time about whether you need a restroom
12:22:42 15 break or some water from the water fountain.

12:22:46 16 And if that's the case, they'll take you in and
12:22:48 17 out of the courtroom and bring you back one row at a time.
12:22:52 18 I cannot let 40 people get up and all walk out of this
12:22:57 19 courtroom together as a group. That will defeat all the
12:22:59 20 effort we've gone to to maintain appropriate spacing, so
12:23:04 21 we're going to do this one row at a time. The Court
12:23:08 22 Security Officers will handle that.

12:23:09 23 The rest of you, while you're seated in the
12:23:11 24 courtroom waiting for me to come back from the jury room,
12:23:15 25 otherwise, just please be seated.

12:23:16 1 If you'd like to talk quietly with somebody close
12:23:19 2 to you, you can do that. If you choose to talk to somebody
12:23:24 3 in close proximity, remember you haven't heard any evidence
12:23:29 4 in this case; therefore, you should not attempt to talk
12:23:31 5 about anything that's happened in the courtroom today.

12:23:33 6 Talk about your grandkids, talk about the weather.
12:23:35 7 I would say talk about upcoming football, but I'm not sure
12:23:39 8 we're going to have upcoming football. Talk about
12:23:42 9 anything, but nothing that's happened in the courtroom
12:23:44 10 today.

12:23:44 11 And if you'd like to just sit there quietly,
12:23:47 12 you're not compelled to visit with anybody. But,
12:23:50 13 otherwise, sit where you are, remain in place, and the
12:23:53 14 Court Security Officers will check with you individually
12:23:56 15 row-by-row about bathroom breaks, and I will be back from
12:24:00 16 the jury room with counsel and with the court reporter as
12:24:04 17 soon as possible.

12:24:04 18 But this is probably going to take some amount of
12:24:07 19 time, maybe -- and I'm guessing, ladies and gentlemen, but
12:24:11 20 this may take another 20, 25 minutes. I don't know. So I
12:24:14 21 just wanted to give you an idea of what's going on and how
12:24:17 22 it's going to work.

12:24:19 23 So at this time, I'm going to ask Mr. Baxter and
12:24:23 24 Ms. Smith, along with the court reporter, to join me in the
12:24:27 25 jury room again.

12:24:30 1 COURT SECURITY OFFICER: All rise.

12:24:31 2 (Bench conference outside the courtroom.)

12:26:06 3 THE COURT: Come in, Ms. Cannon.

12:26:12 4 Would you please have a seat right there?

12:26:16 5 JUROR CANNON: Yes, sir.

12:26:17 6 THE COURT: Thank you so much.

12:26:17 7 Ms. Cannon, I saw you through the process this
12:26:20 8 morning, and I want to tell you I'm impressed with the
12:26:24 9 clear seriousness that you've taken everything, and when
12:26:27 10 you said your answer in response to whether you knew Todd
12:26:34 11 Parish and you talked about the family, and then I think
12:26:38 12 you said that in response to Ms. Smith's question that you
12:26:43 13 might be a better fit for another jury, and she asked if
12:26:46 14 you could be fair, and you said I might question whether I
12:26:50 15 could be. Is that all correct?

12:26:52 16 JUROR CANNON: I would say I would hate for -- for
12:26:54 17 someone else to -- to infer that I wasn't fair. I -- my
12:27:01 18 whole life is evaluating whether something is right or
12:27:06 19 wrong, and it makes no difference who your momma is or your
12:27:11 20 daddy.

12:27:11 21 THE COURT: Right.

12:27:12 22 JUROR CANNON: So I deal with that all the time --
12:27:14 23 I just don't want anyone saying, well, since she knew
12:27:18 24 everyone, that she came in in -- in one way or the other.

12:27:23 25 THE COURT: Well, what I -- I'm not so concerned

12:27:26 1 about what other people may think. What I want to know is,
12:27:29 2 to you, within your own mind and your own heart, can you
12:27:32 3 tell me and can you tell these lawyers that you'll be fair
12:27:38 4 and impartial, and you'll treat Apple's side of the case
12:27:43 5 just like the Plaintiff, even though Todd's brother-in-law
12:27:47 6 is Mr. Baxter, and he'll be taking a big part of this
12:27:51 7 trial? Can you -- can you do that?

12:27:53 8 JUROR CANNON: I believe I can be fair.

12:27:55 9 THE COURT: Do you have any doubts about whether
12:27:57 10 you can be fair?

12:27:58 11 JUROR CANNON: No, sir. And I don't have any
12:28:00 12 preconceived ideas --

12:28:02 13 THE COURT: And you could rule against the
12:28:05 14 Plaintiff and not worry about Mr. Baxter or Laurie Parish
12:28:09 15 or Todd Parish or any of these folks you've known so long
12:28:11 16 being upset at you?

12:28:12 17 JUROR CANNON: I believe they would think that I
12:28:14 18 had done what I was challenged to do, regardless of the
12:28:17 19 outcome.

12:28:17 20 THE COURT: Okay. Well, again, I'm not concerned
12:28:20 21 and the law doesn't require me to be concerned about what
12:28:22 22 other people in the room may think.

12:28:25 23 JUROR CANNON: Okay.

12:28:25 24 THE COURT: What I need to know is about you
12:28:28 25 yourself, and if you tell me, notwithstanding your broad

12:28:32 1 knowledge of the Parish family, you can be fair and
12:28:35 2 impartial, then I'll believe you.

12:28:37 3 JUROR CANNON: Yes.

12:28:37 4 THE COURT: Okay.

12:28:41 5 JUROR CANNON: I believe I can. Of course, that's
12:28:43 6 the easy thing to say but, yes, I believe I -- fair,
12:28:46 7 impartial.

12:28:47 8 THE COURT: Let me ask this, Ms. Smith: Do you
12:28:50 9 have any questions for Ms. Cannon?

12:28:52 10 MS. SMITH: Well, Ms. Cannon, first of all, I
12:28:53 11 appreciate your honesty. I don't know -- I don't know the
12:28:57 12 Parishes like you do, but it's a very important case to
12:29:02 13 Apple. And so putting yourself in my shoes, I sensed a
12:29:09 14 little bit of hesitancy of your willingness to sit in
12:29:11 15 judgment and to sit in a case where Judge Parish's husband
12:29:16 16 is on the other side. And I sensed that you questioned
12:29:18 17 whether you could comfortably do that or you might just be
12:29:23 18 a better fit -- they'll call you, again, I guarantee you if
12:29:27 19 you opt out of this litigation, you'll get another
12:29:30 20 opportunity to serve. But I thought what you were trying
12:29:32 21 to tell me is you might be a better fit for a different
12:29:35 22 case.

12:29:36 23 JUROR CANNON: I wanted to be honest with you that
12:29:39 24 I do know the Parishes long-standing, long-standing. But I
12:29:45 25 do believe that I -- I have a very detailed mind and

12:29:49 1 overview and mathematic mind of how things work. And if
12:29:55 2 you tell me it has to be a hundred percent, not 80 percent,
12:30:00 3 then I will hold to the 100 percent, and can do that
12:30:03 4 without any reservations.

12:30:04 5 But, you know, know right up, yes, have I known
12:30:09 6 the Parishes, absolutely. I actually didn't know she had
12:30:13 7 remarried, though.

12:30:15 8 MR. BAXTER: She tries to keep that a secret.

12:30:21 9 JUROR CANNON: And then I wondered how you caught
12:30:23 10 her because, you know, she runs all the time.

12:30:25 11 So that is your decision.

12:30:27 12 MR. BAXTER: Thank you.

12:30:28 13 JUROR CANNON: Again, I evaluate lots of things
12:30:30 14 with mommas not being -- knowing I've taught people's
12:30:37 15 children I've known forever. But it's a big case.

12:30:40 16 THE COURT: Mr. Baxter, do you have any questions
12:30:42 17 for Ms. Cannon?

12:30:43 18 MR. BAXTER: No, Your Honor.

12:30:44 19 THE COURT: Okay. Ms. Cannon, let me try one more
12:30:48 20 question --

12:30:49 21 JUROR CANNON: Yes, sir.

12:30:49 22 THE COURT: -- and then we'll finish this up.
12:30:52 23 You're going to hear two different sides -- if you're on
12:30:56 24 the jury, you're going to hear two different sides of a lot
12:30:59 25 of questions, and deciding whether you're on one side or

12:31:01 1 the other which side you believe, a lot of that is going to
12:31:05 2 depend on how much credibility you place in the witnesses
12:31:09 3 and -- and how convincing the lawyers are that are arguing
12:31:15 4 the case.

12:31:15 5 Is it going to impact your ability to make those
12:31:18 6 close calls about whether you're on the left side or the
12:31:21 7 right side of an issue if Laurie Parish's husband is one of
12:31:26 8 the lawyers arguing for one side of that issue?

12:31:29 9 If that's not going to make a difference and
12:31:33 10 you're going to come down whichever way it would be if it
12:31:37 11 was Sam Smith instead of Sam Baxter arguing for the
12:31:39 12 Plaintiff, then I need to know that.

12:31:41 13 But if that's going to impact how you make those
12:31:44 14 close calls based on credibility and believability and
12:31:48 15 effective advocacy, because that's what lawsuits mostly
12:31:53 16 boil down to, if -- if it's going to make any difference, I
12:31:57 17 need to know. If it's not going to make any difference, I
12:32:00 18 need to know that, too. That's really the bottom-line
12:32:04 19 question, Ms. Cannon.

12:32:04 20 So if I pose it to you like that and tell you
12:32:09 21 that's the bottom line question, will it make any
12:32:10 22 difference or will it not make any difference? Within your
12:32:14 23 own mind.

12:32:14 24 JUROR CANNON: It would not make -- I didn't know
12:32:15 25 Sam Baxter existed. If it were Laurie Parish trying the

12:32:18 1 case, yes. But I didn't know there was even a connection
12:32:22 2 at all until I walked in here.

12:32:24 3 THE COURT: And now knowing about that connection,
12:32:26 4 you're telling me it won't make any difference?

12:32:29 5 JUROR CANNON: No.

12:32:30 6 THE COURT: Okay. Thank you so much. Ms. Cannon,
12:32:32 7 I'm going to let the Court Security Officer take you back
12:32:34 8 to your seat.

12:32:35 9 JUROR CANNON: Thank you.

12:32:36 10 THE COURT: Thank you so much, and we'll be back
12:32:38 11 in there as quickly as we can.

12:32:41 12 JUROR CANNON: Thank you.

12:32:45 13 (Juror excused to return to courtroom.)

12:32:45 14 THE COURT: No. 14?

12:32:51 15 I am not going to excuse Ms. Cannon. I'll deny
12:32:56 16 Defendant's challenge for cause.

12:33:00 17 MS. SMITH: Thank you, Your Honor.

12:33:09 18 (Juror brought into courtroom.)

12:33:09 19 THE COURT: Come on back, ma'am. How are you?

12:33:27 20 JUROR ACHTERHOF: I'm good. How are you?

12:33:28 21 THE COURT: Please have a seat right there.

12:33:32 22 I'm sorry I called you Mr. Achterhof. I was so
12:33:35 23 concentrating on how to pronounce your last name the right
12:33:35 24 way I forgot to look at the first name.

12:33:35 25 JUROR ACHTERHOF: That's okay. I've only had it

12:33:35 1 for 30 years. It's one of those I'm still trying to get
12:33:35 2 use to it sometimes.

12:33:43 3 THE COURT: I understand. What I want to talk to
12:33:44 4 you about is this: During the questioning that took place
12:33:48 5 this morning, you said something to the effect -- I wrote
12:33:51 6 down in my notes -- you said something to the effect, if
12:33:54 7 the Plaintiff is taking on Apple, they must have something.

12:33:58 8 Now, I heard you also say but it would depend on
12:34:02 9 the evidence.

12:34:03 10 JUROR ACHTERHOF: Uh-huh.

12:34:04 11 THE COURT: So what I really need to know is, can
12:34:08 12 you tell me that you will put everything that you know or
12:34:13 13 think you know out of your mind, hear the evidence in this
12:34:18 14 case if you're selected as a juror, and that means the
12:34:21 15 witnesses and their sworn testimony and the documentary
12:34:25 16 evidence that I admit into evidence, that you will listen
12:34:29 17 and -- and review the evidence in this case, and you will
12:34:33 18 make a decision on each question that you might be asked
12:34:38 19 based solely and only on that evidence; that there won't be
12:34:42 20 anything else that contributes to you reaching a decision?
12:34:46 21 That's the real question.

12:34:48 22 Can you -- can you take the notion that, well, if
12:34:51 23 they're suing Apple, there must be something there? I
12:34:54 24 think Ms. Smith called that her "where there's smoke,
12:34:57 25 there's fire" question.

12:34:59 1 JUROR ACHTERHOF: Yeah.

12:35:01 2 THE COURT: Is that going to impact your decision
12:35:03 3 in any way, or can you tell me it won't impact your
12:35:06 4 decision and you'll make your decision based solely and
12:35:09 5 only on the evidence that you haven't heard yet but you
12:35:12 6 will hear if you're a juror?

12:35:14 7 JUROR ACHTERHOF: To be honest, it might, just
12:35:17 8 going off of big companies and, you know, big companies a
12:35:21 9 lot of times they take advantage of the little guy.

12:35:26 10 THE COURT: And you're not -- you're not sure that
12:35:29 11 you could keep that from being a factor?

12:35:31 12 JUROR ACHTERHOF: I'm not.

12:35:32 13 THE COURT: Okay. Ms. Smith, do you have any
12:35:34 14 questions for Ms. Achterhof?

12:35:37 15 MS. SMITH: Yes, ma'am. I had a lengthy
12:35:39 16 conversation with you and I also took some notes. I have a
12:35:42 17 different -- different note about your -- your comments.

12:35:45 18 You said that the Plaintiff, I believe, wouldn't
12:35:48 19 be ignorant enough to haul Apple into court if Apple didn't
12:35:55 20 owe some money; is that right?

12:35:56 21 JUROR ACHTERHOF: Well, it's just from my
12:35:58 22 standpoint, you know, just -- I'm just a regular person.
12:36:01 23 If I was going to take on a company like Apple --

12:36:04 24 MS. SMITH: Yes, ma'am.

12:36:05 25 JUROR ACHTERHOF: -- I would be sure in my heart

12:36:07 1 that I had something, you know, because you don't take on
12:36:10 2 something that big -- it'd be like I guess I'm not -- for
12:36:16 3 the -- I don't know.

12:36:18 4 MS. SMITH: Well -- well -- my second question for
12:36:23 5 you, that's not Apple-specific, but it's a long-held belief
12:36:28 6 you've had about big companies generally?

12:36:31 7 JUROR ACHTERHOF: Yes.

12:36:32 8 MS. SMITH: Right. And prior to hearing any of
12:36:34 9 the evidence in the case, you've determined that Apple,
12:36:36 10 because it's a big company, owed some money?

12:36:39 11 JUROR ACHTERHOF: I wouldn't say owed some money,
12:36:41 12 but I've worked for big companies, and there's a lot of,
12:36:46 13 you know, tiptoeing around rules a lot of times.

12:36:49 14 MS. SMITH: Perhaps did something wrong?

12:36:50 15 JUROR ACHTERHOF: Yeah.

12:36:53 16 MS. SMITH: Or let me rephrase it, they did
12:36:54 17 something wrong?

12:36:55 18 JUROR ACHTERHOF: Yeah.

12:36:56 19 MS. SMITH: Thank you, ma'am.

12:36:56 20 THE COURT: Mr. Baxter, you have any questions?

12:36:58 21 MR. BAXTER: No, Your Honor.

12:36:59 22 THE COURT: So based on all this, Ms. Achterhof,
12:37:02 23 what I'm taking away, and I want you to correct me if I'm
12:37:06 24 wrong, but what I'm getting out of all of this is you'd
12:37:09 25 listen to the evidence, you know you haven't heard any

12:37:11 1 evidence, but you can't tell me that there's not some doubt
12:37:14 2 in your mind that you could take these preconceived notions
12:37:18 3 and completely remove them from the decision-making
12:37:22 4 process?

12:37:25 5 JUROR ACHTERHOF: I probably could not.

12:37:28 6 THE COURT: Okay. All right. Well, I appreciate
12:37:28 7 your candor. I'm going to let the Court Security Officer
12:37:31 8 take you back to your seat, and we'll finish this process
12:37:34 9 as quickly as we can.

12:37:37 10 JUROR ACHTERHOF: All right. Thank you.

12:37:39 11 THE COURT: Thank you, ma'am.

12:37:40 12 MS. SMITH: Thank you.

12:37:41 13 (Juror excused to return to courtroom.)

12:37:41 14 THE COURT: All right. I'm going to excuse
12:37:50 15 Ms. Achterhof. The challenge for cause is granted there.

12:37:52 16 MS. SMITH: Thank you, Your Honor.

12:37:55 17 THE COURT: No. 15, please, Mr. Elliott.

12:38:24 18 (Juror brought into jury room.)

12:38:24 19 THE COURT: Good morning, ma'am. Would you please
12:38:26 20 come have a seat right here?

12:38:29 21 JUROR BRIAN: Can I take that mask off and stand
12:38:31 22 right here?

12:38:31 23 THE COURT: That's fine with me, Ms. Brian. I
12:38:33 24 don't like wearing them either.

12:38:35 25 Let me ask you a question. I know you used to

12:38:37 1 work at the Upshur County probation office. Believe it or
12:38:42 2 not, in an earlier life, I was the Harrison County Judge,
12:38:46 3 so I know how county government works, and I know the
12:38:49 4 district judge hires and fires the chief probation officer.
12:38:51 5 And I know if there's somebody in the probation office that
12:38:56 6 gets sideways with the state district judge, they're
12:38:58 7 probably not going to survive for very long.

12:39:01 8 JUROR BRIAN: For sure.

12:39:01 9 THE COURT: So my question is, is there anything
12:39:03 10 about your prior position as a probation officer -- and I
12:39:08 11 know you're not now -- is there anything about your prior
12:39:11 12 position as a probation officer in Upshur County and Judge
12:39:17 13 Laurie Parish's position as the state district judge there
12:39:19 14 that would impact in any way any decision you might be
12:39:22 15 called on to make if you were selected as a juror? Or the
12:39:27 16 flip side of that, can you tell me that if you are selected
12:39:30 17 as a juror, when it comes to you answering the questions
12:39:34 18 you'll be asked on the jury to answer, that that prior
12:39:37 19 situation and your interactions, whatever they may have
12:39:42 20 been with Ms. Parish or anything related about your time
12:39:45 21 with the probation office in Upshur County, will not impact
12:39:49 22 the ultimate decisions you make in any way?

12:39:52 23 JUROR BRIAN: No, I don't -- I don't think so. I
12:39:55 24 mean, I --

12:39:55 25 THE COURT: I asked it both ways, so I probably

12:39:58 1 shouldn't have.

12:39:59 2 JUROR BRIAN: No, I mean, I don't really think so.

12:40:02 3 THE COURT: Okay. Is there anything about the
12:40:04 4 fact -- now, you told me now -- is it a Farmers Insurance
12:40:10 5 agency that you run now?

12:40:12 6 JUROR BRIAN: Yes.

12:40:12 7 THE COURT: Okay.

12:40:12 8 JUROR BRIAN: We opened March the 2nd.

12:40:16 9 THE COURT: Good. Anything about -- anything
12:40:16 10 about your work in the insurance agency business --
12:40:21 11 insurance industry that you think might impact how you
12:40:24 12 would make a decision in this case?

12:40:25 13 JUROR BRIAN: I mean, I haven't been there long
12:40:27 14 enough to really, like, figure that part out. The only
12:40:29 15 thing I'll say is that having been in law enforcement for
12:40:32 16 almost 24 years, it is very difficult for me to -- I mean,
12:40:37 17 I still am very like beyond a reasonable doubt -- I mean,
12:40:45 18 like when I look at things, it's -- it's -- it's very --
12:40:48 19 and don't take this the wrong way on either side, but it's
12:40:52 20 very -- you know, I still look at it from the -- from the
12:40:57 21 law enforcement side.

12:40:57 22 THE COURT: Are you saying --

12:40:58 23 JUROR BRIAN: It's hard to distinguish for me
12:41:00 24 because I haven't been out only three -- you know, what,
12:41:04 25 six months total. It's hard for me to think in line of --

12:41:08 1 THE COURT: Are you saying things are black and
12:41:10 2 white?

12:41:11 3 JUROR BRIAN: Yes, they are very, but they're
12:41:12 4 not --

12:41:12 5 THE COURT: There's not much middle ground in the
12:41:15 6 way you look at things?

12:41:16 7 JUROR BRIAN: Pretty much, yes. I mean, I -- yes.

12:41:19 8 THE COURT: Okay.

12:41:20 9 JUROR BRIAN: I mean, I'm probably -- for me, it
12:41:23 10 would be hard for me to not see the whole -- well, you
12:41:26 11 know, kind of like how -- y'all were talking earlier, the
12:41:29 12 difference of beyond a reasonable doubt and just the -- I
12:41:35 13 forgot what it's even called.

12:41:37 14 THE COURT: Clear and convincing evidence?

12:41:38 15 JUROR BRIAN: Yeah. It would be very difficult
12:41:40 16 for me not to go well --

12:41:41 17 THE COURT: All the way to clear and -- all the
12:41:43 18 way to beyond a reasonable doubt?

12:41:45 19 JUROR BRIAN: Yeah. It would be difficult for me
12:41:47 20 to -- I guess because I've just been on the -- you know, if
12:41:53 21 you get arrested, you probably did something to attract the
12:41:58 22 attention of the police, even if it wasn't necessarily
12:42:00 23 the -- the whole thing.

12:42:00 24 THE COURT: So does that mean in your mind because
12:42:04 25 Optis sued Apple in this case, Apple must have done

12:42:06 1 something?

12:42:07 2 JUROR BRIAN: I don't think we would be here if
12:42:10 3 there wasn't a discussion about it, yes, sir.

12:42:13 4 THE COURT: Well, I promise you, we wouldn't be
12:42:18 5 here if there wasn't a dispute.

12:42:20 6 JUROR BRIAN: Right.

12:42:21 7 THE COURT: The question is, is it more than a
12:42:26 8 dispute?

12:42:27 9 JUROR BRIAN: Prob -- maybe -- I mean, I don't
12:42:27 10 know --

12:42:27 11 THE COURT: Okay.

12:42:27 12 JUROR BRIAN: -- because I don't know anything
12:42:30 13 about it, other than what we've heard.

12:42:32 14 THE COURT: And as I told you out there, you
12:42:34 15 haven't heard any of the evidence yet.

12:42:36 16 JUROR BRIAN: Yeah, so, I mean, I -- I don't know.
12:42:36 17 It would just be really -- I mean, that's -- that would be
12:42:40 18 something I would really have a difficult time deciding one
12:42:41 19 way or -- I'm still going --

12:42:44 20 THE COURT: So I'm hearing two things from you,
12:42:47 21 and you correct me if I'm wrong. I'm hearing I might have
12:42:51 22 a hard time putting out of my mind that perhaps Apple must
12:42:54 23 have done something wrong for this lawsuit to have been
12:42:57 24 brought and to have gotten to this point. I'm hearing
12:43:00 25 that.

12:43:00 1 And I'm also hearing I might have trouble, Judge
12:43:05 2 Gilstrap, following your instructions on the burden of
12:43:08 3 proof because I'm so used to beyond a reasonable doubt in
12:43:13 4 the law enforcement area that I've lived under for decades.

12:43:17 5 Is that -- are both of those true?

12:43:19 6 JUROR BRIAN: Yes, sir.

12:43:20 7 THE COURT: Mr. Baxter, do you have questions?

12:43:22 8 MR. BAXTER: No, Your Honor.

12:43:23 9 THE COURT: Ms. Smith?

12:43:24 10 MS. SMITH: No, Your Honor.

12:43:25 11 JUROR BRIAN: Can I say one more thing?

12:43:26 12 THE COURT: Yes, ma'am.

12:43:27 13 JUROR BRIAN: All -- my daughter is out of town
12:43:29 14 and I'm keeping her -- fixing to be two and fixing to be
12:43:33 15 four-year-old kids, and my mom was supposed to keep them
12:43:36 16 this week, but she's gotten sick.

12:43:39 17 THE COURT: So you've got problems with keeping
12:43:41 18 your family?

12:43:43 19 JUROR BRIAN: (Nods head affirmatively.)

12:43:45 20 THE COURT: Okay. Thank you so much. I'm going
12:43:47 21 to let the Court Security Officer take you back to your
12:43:49 22 seat.

12:43:50 23 (Juror excused to return to courtroom.)

12:43:50 24 THE COURT: No. 16, Mr. Elliott.

12:43:59 25 MS. SMITH: Your Honor, we don't object to

12:44:01 1 Plaintiffs' challenge.

12:44:02 2 THE COURT: I'm going to release Ms. Brian,
12:44:06 3 both -- both on impartiality grounds and personal family
12:44:13 4 scheduling issues.

12:44:16 5 And, thankfully, we have plenty of people on this
12:44:20 6 panel to get a jury out of.

12:44:22 7 (Juror brought into jury room.)

12:44:38 8 THE COURT: Hello, Mr. Huddleston. Come on in,
12:44:41 9 please, sir. Why don't you just have a seat right there.

12:44:43 10 I had -- I had asked very early today in the
12:44:48 11 process if there were people on the panel who might have
12:44:52 12 problems being here for the entirety of the trial if they
12:44:54 13 were selected. And I asked folks who might have a
12:44:57 14 scheduling problem to let me know by raising their hands,
12:45:01 15 and I wrote down that you raised your hand.

12:45:04 16 JUROR HUDDLESTON: Uh-huh.

12:45:05 17 THE COURT: If you have a scheduling problem with
12:45:08 18 being here this week and maybe a day or two of next week,
12:45:11 19 tell me what those are, please, Mr. Huddleston.

12:45:14 20 JUROR HUDDLESTON: As I said, I have a little,
12:45:16 21 small lawn care business. I do two pretty big accounts.
12:45:20 22 One of them is the Bloomberg ISD school, and then another
12:45:24 23 is a -- a church that has a day school. Well, they're
12:45:27 24 starting school next week, and those -- those lawns need to
12:45:31 25 be cleaned up and looking good for school.

12:45:34 1 And, also, my father-in-law was diagnosed with
12:45:36 2 cancer here recently, and he's about to start doing
12:45:39 3 treatments and doctors and stuff like that. And my wife
12:45:43 4 having the more flexible job of her sisters, she would kind
12:45:50 5 of help get him here and there, and then I would kind of
12:45:54 6 have to get my kids here and there.

12:45:57 7 THE COURT: Okay. And you're a captain with the
12:46:02 8 Texarkana Fire Department?

12:46:03 9 JUROR HUDDLESTON: Uh-huh.

12:46:03 10 THE COURT: And like a lot of people in
12:46:06 11 firefighting and law enforcement, you've got a second
12:46:08 12 job --

12:46:08 13 JUROR HUDDLESTON: Yes, sir.

12:46:08 14 THE COURT: -- to make ends meet?

12:46:10 15 JUROR HUDDLESTON: Yes, sir.

12:46:10 16 THE COURT: I understand that.

12:46:13 17 Tell me about your father-in-law's cancer
12:46:17 18 treatments. When will they start? Where it will be? Is
12:46:22 19 it radiation? Is it chemo? Can you give me more details?

12:46:28 20 JUROR HUDDLESTON: It's pretty -- pretty early
12:46:30 21 into it. He had his thyroid removed. I don't mind telling
12:46:34 22 you, you know, everything. It's -- it's papillary thyroid
12:46:36 23 carcinoma. And he's already had this part of his thyroid
12:46:40 24 taken out or part of this one. And he's going back to the
12:46:43 25 doctor here pretty soon, some time this week or the

12:46:46 1 beginning of next week, I think, to get those stitches out
12:46:50 2 and to try to get -- he's going to tell that surgeon that
12:46:56 3 removed that that he wants to go see an oncologist.

12:47:01 4 THE COURT: Okay. Is he in Texarkana or where is
12:47:07 5 he?

12:47:07 6 JUROR HUDDLESTON: The surgeon is in Texarkana.
12:47:08 7 Somebody told him it's not called Baylor anymore in Dallas
12:47:12 8 in the Metroplex. It's called something else.

12:47:14 9 THE COURT: No, it's still called Baylor -- Baylor
12:47:16 10 Scott & White.

12:47:18 11 JUROR HUDDLESTON: Okay.

12:47:18 12 THE COURT: It merged with another hospital.

12:47:18 13 JUROR HUDDLESTON: He wants to go out there.

12:47:20 14 THE COURT: Okay. Does your father-in-law live in
12:47:22 15 Texarkana?

12:47:22 16 JUROR HUDDLESTON: He lives in Atlanta with us.

12:47:25 17 THE COURT: Atlanta. Okay. So if he -- if he
12:47:29 18 needs to travel either to Texarkana or to Dallas because of
12:47:33 19 his medical condition, I understand what you're telling me
12:47:35 20 is the burden of that is going to fall on your wife?

12:47:39 21 JUROR HUDDLESTON: Uh-huh.

12:47:40 22 THE COURT: And that's going to leave you to carry
12:47:41 23 the extra burden of dealing with your kids?

12:47:44 24 JUROR HUDDLESTON: Uh-huh.

12:47:45 25 THE COURT: And your kids, remind me, are how old,

12:47:47 1 and where are they in school?

12:47:50 2 JUROR HUDDLESTON: Nine, eight, and three, and
12:47:52 3 they go -- the two girls -- oldest go to Atlanta, and my
12:47:56 4 little boy, that day school that I take care of the yard.
12:48:02 5 He will start there the 10th of August, so next Monday.

12:48:04 6 THE COURT: Now, assuming all this comes about and
12:48:05 7 you are concerned that it might, is there anybody else
12:48:06 8 besides you that can see about your kids and getting them
12:48:10 9 to and from the places they need to go --

12:48:13 10 JUROR HUDDLESTON: Uh-huh --

12:48:13 11 THE COURT: -- other than you for the next week
12:48:15 12 and a couple of days?

12:48:17 13 JUROR HUDDLESTON: Yes, sir.

12:48:17 14 THE COURT: There is somebody else that can take
12:48:19 15 care of that? Somebody else in the family can see about
12:48:27 16 your kids?

12:48:27 17 JUROR HUDDLESTON: My mother and my mother-in-law.
12:48:30 18 She -- my mother-in-law is not really able to drive -- make
12:48:32 19 a long trip because she's had several back surgeries over
12:48:37 20 the years, but she can watch after my kids.

12:48:40 21 THE COURT: Okay.

12:48:40 22 All right. Mr. Baxter, do you have any questions
12:48:42 23 of Mr. Huddleston?

12:48:43 24 MR. BAXTER: No, Your Honor.

12:48:44 25 THE COURT: Ms. Smith, do you have any questions?

12:48:46 1 MS. SMITH: No, Your Honor.

12:48:47 2 THE COURT: Is there anything else,
12:48:48 3 Mr. Huddleston, that I need to know about?

12:48:50 4 JUROR HUDDLESTON: No, just I really just --

12:48:52 5 THE COURT: I heard you tell us that you don't
12:48:54 6 have any interest in the topic.

12:48:55 7 JUROR HUDDLESTON: Uh-huh.

12:48:56 8 THE COURT: But, unfortunately, being interested
12:48:58 9 or not interested is not an issue we have to deal with.

12:49:03 10 JUROR HUDDLESTON: You know, like I said, whether
12:49:04 11 I get picked or not, I'll be fair. It's just bad timing
12:49:08 12 for me right now.

12:49:09 13 THE COURT: I understand. I understand.

12:49:11 14 JUROR HUDDLESTON: I wouldn't be against at all
12:49:13 15 being summonsed back in a couple months or whenever.

12:49:16 16 THE COURT: Okay.

12:49:17 17 JUROR HUDDLESTON: But it's like in that letter,
12:49:18 18 this is just a part of being a citizen, and this is just
12:49:21 19 what we have to do sometimes.

12:49:22 20 THE COURT: Well, I don't know if you're going to
12:49:24 21 get picked or not, but I guarantee you if you don't get
12:49:28 22 picked, you'll get summonsed back again.

12:49:31 23 JUROR HUDDLESTON: Yes.

12:49:32 24 THE COURT: Thank you, Mr. Huddleston. I'm going
12:49:34 25 to let you go back and have your seat. The Court Security

12:49:36 1 Officer will escort you back out there.

12:49:40 2 JUROR HUDDLESTON: Okay.

12:49:41 3 (Juror excused to return to courtroom.)

12:49:41 4 THE COURT: I'm not going to excuse

12:49:49 5 Mr. Huddleston.

12:49:50 6 MR. BAXTER: We'll agree to excuse him, Your

12:49:53 7 Honor, if it makes a difference.

12:49:55 8 MS. SMITH: I'll agree as well.

12:49:57 9 MR. BAXTER: We've got plenty to go.

12:49:57 10 THE COURT: Well, having your own private business
12:50:01 11 and being self-employed is not a basis to get out of jury
12:50:03 12 duty. I've heard that many, many times, and I understand
12:50:05 13 the real-world impact of it because my wife is
12:50:08 14 self-employed. But --

12:50:11 15 MR. BAXTER: Coupled with his father-in-law's
12:50:13 16 cancer situation, Your Honor, and I -- we've got lots of
12:50:18 17 jurors.

12:50:19 18 THE COURT: Okay. Both sides agree that
12:50:21 19 Mr. Huddleston should be released?

12:50:22 20 MS. SMITH: Yes, Your Honor.

12:50:23 21 MR. BAXTER: Yes, Your Honor.

12:50:24 22 THE COURT: Okay. Barring that disagreement, I
12:50:26 23 would not have excused him, but based on your agreement, I
12:50:29 24 will excuse him.

12:50:30 25 MS. SMITH: Thank you, Your Honor.

12:50:34 1 THE COURT: Technically, he's probably not
12:50:38 2 required to be excused, but I understand counsel's concerns
12:50:41 3 about having a disgruntled juror on the jury, and I suspect
12:50:46 4 that's what your concerns are.

12:50:48 5 MR. BAXTER: It is, Your Honor, plus
12:50:50 6 disinterested.

12:50:51 7 THE COURT: Okay. That's -- No. 4 is on the
12:50:55 8 panel. No. 14 is off the panel. No. 15 is off. And
12:51:00 9 No. 16 is off.

12:51:01 10 That means we've got three excused. We're going
12:51:06 11 to seat eight. Each side is going to have four challenges
12:51:10 12 for cause -- or excuse me, peremptory challenges. That
12:51:14 13 means we need to strike through 19; is that correct?

12:51:18 14 MS. SMITH: That's what I have, Your Honor.

12:51:19 15 MR. BAXTER: Yes, Your Honor.

12:51:23 16 THE COURT: Okay. How long, Mr. Baxter, does the
12:51:26 17 Plaintiff need to strike its list?

12:51:29 18 MR. BAXTER: You think we could have 20 minutes,
12:51:32 19 Your Honor?

12:51:32 20 THE COURT: I think 20 minutes is fine.

12:51:34 21 Ms. Smith, does that create any problems for you?

12:51:36 22 MS. SMITH: None at all. Thank you, Your Honor.

12:51:38 23 THE COURT: It's approximately 10 until 1:00. So
12:51:41 24 let's just say 1:15.

12:51:45 25 MR. BAXTER: Thank you, Your Honor.

12:51:46 1 MS. SMITH: Thank you, Your Honor.

12:51:46 2 THE COURT: Okay. We're going to go back in the
12:51:48 3 courtroom, and then I will tell the panel what's going on,
12:51:53 4 and, at that point, I'll excuse you to leave the courtroom
12:51:56 5 and go meet with your co-counsel and strike your list.

12:51:59 6 MR. BAXTER: Thank you, Your Honor.

12:52:00 7 MS. SMITH: Thank you.

12:52:51 8 (Bench conference concluded.)

12:52:51 9 COURT SECURITY OFFICER: All rise.

12:52:52 10 THE COURT: Be seated, please.

12:52:55 11 Thank you, ladies and gentlemen, for your
12:53:01 12 patience. The next step of the process is that the lawyers
12:53:07 13 are going to meet separately and discuss how to exercise
12:53:10 14 what are called their peremptory challenges. And I've
12:53:15 15 given them until 1:15 to do that.

12:53:19 16 I'm going to leave the bench. The lawyers are
12:53:22 17 going to leave the courtroom and meet respect -- in their
12:53:26 18 separate groups respectively and complete that process.
12:53:30 19 I'm going to ask that you stay seated where you are. I'm
12:53:33 20 going to let the court security staff continue to visit
12:53:37 21 with you about bathroom breaks that may be needed.

12:53:41 22 Also, ladies and gentlemen, when the lawyers come
12:53:45 23 back about 1:15 and I'm back on the bench about 1:20, it's
12:53:50 24 probably going to be another 15, 20, 25 minutes before the
12:53:54 25 jury is actually selected and seated. It may be a little

12:53:57 1 longer. So we could be pushing 2:00 o'clock before the
12:54:01 2 rest of you that are not selected are released and the jury
12:54:05 3 is selected, sworn, and seated in the jury box.

12:54:08 4 This is the first time I've picked a jury under
12:54:12 5 these public health conditions. So none of us knew exactly
12:54:17 6 how long this would take.

12:54:19 7 Because I thought there was a reasonable risk that
12:54:21 8 we might go beyond 12:00 noon in doing it -- and obviously
12:54:27 9 we have -- the clerk's office has some snacks and some
12:54:33 10 bottled water, and once I leave the bench and the lawyers
12:54:37 11 are out of the courtroom meeting, as I've indicated, when
12:54:41 12 the Court Security Officers come by to check with you about
12:54:44 13 a bathroom break, if you would like a bottle of water, if
12:54:48 14 you would like a packaged snack here in the courtroom right
12:54:52 15 in your seat, just let the Court Security Officer know
12:54:55 16 you'd like that, and they'll bring that to you.

12:54:57 17 You are the first group of citizens in the history
12:55:01 18 of this court who have ever been allowed to eat in a
12:55:04 19 courtroom. That is an absolute taboo ordinarily, but we
12:55:10 20 are not in ordinary times, and I don't want anybody who
12:55:13 21 might have low blood sugar or other problems being put in a
12:55:19 22 bad way because we've taken longer than we ordinarily
12:55:23 23 would.

12:55:23 24 So feel free to ask for water or a snack or both
12:55:28 25 while the Court Security Officers see about you while we're

12:55:31 1 out of the courtroom. And as soon as possible, I'll be
12:55:34 2 back with the lawyers and identify the eight of you that
12:55:38 3 have been selected to serve on our jury.

12:55:40 4 With that, counsel, you're excused to address your
12:55:44 5 strikes.

12:55:44 6 The Court stands in recess.

12:55:46 7 COURT SECURITY OFFICER: All rise.

01:21:50 8 (Recess.)

01:21:50 9 COURT SECURITY OFFICER: All rise.

01:21:52 10 THE COURT: Be seated, please.

01:22:43 11 All right. Ladies and gentlemen, if you will
01:22:51 12 listen carefully when your name is called, if you'll come
01:22:56 13 forward and take your place in the jury box:

01:23:05 14 When you get to the jury box, ladies and
01:23:12 15 gentlemen, you'll notice that there are plastic face
01:23:17 16 shields in some of the chairs. If you are the first person
01:23:21 17 called, if you will go to the front row of the jury box,
01:23:26 18 the last chair on the end, stand in front of the chair that
01:23:30 19 doesn't have a face shield sitting in the chair.

01:23:33 20 The first person called should go to the
01:23:36 21 furthest chair from where I am in the jury box, remain
01:23:40 22 standing. Second person called will end up in the front of
01:23:44 23 the third row -- excuse me, from the third chair from the
01:23:47 24 end on the first row, and then the third person will be two
01:23:50 25 chairs down, and there will be four people spaced on the

01:23:54 1 front row of the jury box and four people spaced in the
01:23:57 2 same fashion on the second row of the jury box.

01:23:59 3 And if you will remain standing until all eight of
01:24:04 4 the selected jurors are in the jury box, please.

01:24:06 5 So with that, I'm going to ask Ms. Lockhart, our
01:24:11 6 courtroom deputy, to call the names of the eight members of
01:24:14 7 the panel that have been selected to serve as jurors in
01:24:17 8 this case.

01:24:25 9 COURTROOM DEPUTY: Roger Young, Kassie Blum, Jamie
01:24:37 10 Alexander, Andrea Folsom, Amanda McKnight, David Williams,
01:25:14 11 Shelley Feltner, and Quintisha Scott.

01:25:49 12 THE COURT: Please be seated.

01:26:00 13 Ms. McKnight, if you would move down one chair,
01:26:03 14 and then Mr. Williams, and if each of you would move down
01:26:07 15 one, that way we will get Ms. Williams on the same level on
01:26:10 16 the back row, and everybody will have a chair between them.
01:26:13 17 Thank you.

01:26:13 18 And if each of you will keep that same seat that
01:26:16 19 you're in, and when you leave the courtroom and come back,
01:26:19 20 go back to that same seat in the same order throughout the
01:26:22 21 trial, I'd appreciate it.

01:26:24 22 Those of you that were not selected to serve on
01:26:28 23 the jury in this case, I'm about to excuse you at this
01:26:30 24 time.

01:26:32 25 But, ladies and gentlemen, I want to take a moment

01:26:34 1 and express the Court's appreciation, and I know both the
01:26:39 2 Plaintiff and the Defendant join me in this. We appreciate
01:26:43 3 your willingness to come under these circumstances, to go
01:26:46 4 through the process of presenting yourself to serve as
01:26:49 5 potential jurors in this case.

01:26:51 6 And even though each of you were not selected, you
01:26:55 7 each performed a very real and important public service by
01:26:58 8 being here. Every one of you had other places to be today,
01:27:02 9 other things to do in your life that were important to you
01:27:05 10 and those that you're close to, and you set those aside to
01:27:09 11 answer the call to jury duty, to appear as directed by the
01:27:13 12 Court, to present yourself openly as a prospective juror in
01:27:19 13 this case, and all of that is very important, all of it is
01:27:24 14 noteworthy, and the Court thinks it's highly appropriate to
01:27:27 15 take notice of it on the record today.

01:27:29 16 We could not function as -- the Court could not
01:27:34 17 function as we're required to under our Constitution
01:27:37 18 without ordinary citizens such as yourselves doing exactly
01:27:42 19 what you've done today and sacrificing in each of your
01:27:46 20 personal lives to things that you would otherwise be doing
01:27:52 21 today and present yourself just as you have done.

01:27:54 22 I know that I speak for everyone on this side of
01:27:57 23 the bar when I say thank you very much for the service
01:27:59 24 you've performed.

01:28:00 25 Now, as you leave, the clerk staff will meet you

01:28:05 1 outside the courtroom. They're going to want to recover
01:28:07 2 these very expensive laminated numbers that you're wearing
01:28:11 3 on your clothing. They want to answer any questions you
01:28:13 4 have.

01:28:13 5 If you need any kind of written excuse for your
01:28:16 6 employer to explain where you've been today or if there's
01:28:21 7 anything they can do to help you, they will be more than
01:28:24 8 happy to do it.

01:28:25 9 I'm releasing you, ladies and gentlemen, who were
01:28:28 10 not selected, again, with the thanks of the Court. And
01:28:33 11 please travel safely to your places of work and to your
01:28:36 12 homes. I hope to see you sometime in the future with the
01:28:40 13 same positive attitude which you each exhibited today.

01:28:45 14 Those of you not selected on the jury are released
01:28:52 15 for the day.

01:28:54 16 (Unselected venire panel members out.)

01:29:29 17 THE COURT: Please be seated.

01:29:36 18 Ladies and gentlemen of the jury, I'm going to ask
01:29:46 19 you to stand at this time, and our courtroom deputy,
01:29:49 20 Ms. Lockhart, will administer the oath to you as jurors in
01:29:52 21 this case.

01:29:53 22 (Jurors sworn.)

01:30:00 23 THE COURT: Please be seated.

01:30:10 24 Ladies and gentlemen, I'm going to excuse you in a
01:30:17 25 few minutes to retire to the jury room and have lunch,

01:30:20 1 which is waiting for you there. I know it's 1:30 now, but
01:30:24 2 it is there, and it will be available to you in just a few
01:30:27 3 minutes.

01:30:28 4 And as I've said, the Court will provide lunch for
01:30:31 5 you each day as long as you're serving on this jury.

01:30:34 6 However, before I release you to have lunch in the
01:30:37 7 jury room, there are a few instructions that I need to go
01:30:42 8 over with you before I do that.

01:30:43 9 First of all, please make sure sometime today
01:30:48 10 before you leave the courthouse that Ms. Clendening --
01:30:51 11 Ms. Clendening in the clerk's office has a good cell phone
01:30:54 12 number for you. If there were any reason we needed to
01:30:56 13 reach you before you got here for the next day's jury
01:31:01 14 service, we'd need a phone number where we could reach you
01:31:04 15 by cell phone.

01:31:05 16 So please make sure the Court -- the clerk's
01:31:08 17 office staff has a good cell phone number for you before
01:31:12 18 you leave.

01:31:12 19 With regard to cell phones, too, I'm going to
01:31:15 20 direct that you not bring your cell phones back into the
01:31:19 21 courthouse after today. You can leave them in your
01:31:23 22 vehicle. But they often ring when they're not supposed to
01:31:29 23 ring, and when you think they're on silent, they're not on
01:31:32 24 silent. And they can be very disruptive if they make noise
01:31:37 25 unintentionally.

01:31:38 1 The lawyers in the case have electronic devices
01:31:41 2 with them. They're under the same constraints not to let
01:31:44 3 them be a disruption in the courtroom, but those are tools
01:31:48 4 of the trade nowadays in practicing law, and they're
01:31:50 5 entitled to have them.

01:31:51 6 Also, one of the things I'm going to tell you in
01:31:55 7 these instructions is that you're not to do any research
01:31:58 8 about this case. You're not to do any research about the
01:32:01 9 Plaintiffs. You're not to do any research about the
01:32:04 10 Defendant, Apple. You're not to do any research about any
01:32:07 11 of the facts and allegations and testimony that you're to
01:32:13 12 hear in this case.

01:32:14 13 You're not to do any research about the witnesses.
01:32:17 14 You're not to do any research of any time -- any kind.

01:32:20 15 And, unfortunately, most cell phones today are
01:32:23 16 small computers, and I find jurors are sometimes tempted
01:32:28 17 when they're on a lunch break or a recess to pull out their
01:32:32 18 smartphone and find out exactly what was meant with what
01:32:35 19 they heard just before the break.

01:32:37 20 So against the prospect you might be tempted to
01:32:41 21 use that device to violate my instructions that you not do
01:32:46 22 any research and against the prospect that it might
01:32:49 23 accidentally disrupt the trial -- and there have been
01:32:52 24 thousands of hours and thousands of dollars put into the
01:32:55 25 preparation of this case for trial, so disruptions are very

01:33:01 1 much to be discouraged -- against those two prospects, I'm
01:33:07 2 going to ask you not to bring your cell phones into the
01:33:09 3 courthouse after today. If you have them with you, ladies,
01:33:13 4 if you have them in a purse, leave them in the jury room
01:33:16 5 today.

01:33:16 6 But if you come back tomorrow, if you need to
01:33:20 7 check a text message or voicemail or email, there'll be
01:33:26 8 breaks where you can go to your vehicle during the day.
01:33:29 9 But don't bring your cell phones back into the courthouse
01:33:32 10 after today, please.

01:33:33 11 Also, ladies and gentlemen of the jury, do not
01:33:37 12 discuss this case with anyone. This is an absolutely
01:33:42 13 critical instruction. As a matter of fact, by the time
01:33:46 14 this trial is over, you're going to be sick and tired of
01:33:49 15 hearing me say don't discuss this case with anyone, but I'm
01:33:53 16 going to continue to say it time after time throughout the
01:33:55 17 trial because it is so very critical, important, and
01:34:00 18 fundamental to the entire trial process.

01:34:03 19 It is absolutely essential that the only
01:34:06 20 information you have before you when it comes time for you
01:34:11 21 to decide how to answer the questions that will be
01:34:13 22 presented to you in the verdict form at the end of the
01:34:18 23 trial, it is critical that the only information you have
01:34:21 24 before you and to draw upon to answer those questions must
01:34:26 25 have come from the testimony given under oath in this

01:34:29 1 courtroom from the witness stand subject to
01:34:32 2 cross-examination and those documents that the Court has
01:34:40 3 reviewed and has determined are fully admissible under the
01:34:43 4 Rules of Evidence.

01:34:44 5 There must be nothing else that enters into your
01:34:46 6 decision. There must be no other information that you draw
01:34:49 7 upon or call upon to answer those questions except the
01:34:53 8 sworn testimony of the witnesses and the exhibits that the
01:34:56 9 Court's admitted into evidence. Those are the evidence in
01:34:59 10 the case, and you must base your decisions solely and only
01:35:04 11 on the evidence in this case.

01:35:05 12 That's why you're going to hear me say don't
01:35:10 13 discuss this case with anyone time after time, because I
01:35:14 14 promise you, ladies and gentlemen of the jury, if you even
01:35:17 15 try to mention this to somebody, you're going to violate
01:35:21 16 this instruction. And in doing that, you will put at risk
01:35:25 17 the entire trial process that might have to potentially be
01:35:30 18 discarded and start over again with a whole new jury. And
01:35:35 19 that would be a huge waste of time and money and resources.

01:35:38 20 So do not discuss this case with anyone. And when
01:35:41 21 I say "discuss," I mean in the broadest sense of the term.
01:35:45 22 Don't communicate with anybody about this case, not about
01:35:49 23 the lawyers, not about the parties, not about any of what
01:35:53 24 you hear over the course of this trial.

01:35:55 25 And let me just say this: Unless you live alone,

01:36:01 1 when you get to wherever you live tonight at the end of the
01:36:04 2 day, the first thing that person or persons are going to
01:36:07 3 ask when you walk through the door is, tell me what
01:36:09 4 happened in federal court in Marshall today.

01:36:12 5 Don't even try to answer that question, because if
01:36:15 6 you do, you will almost certainly violate my instruction.
01:36:20 7 Just simply say -- and blame it on me. Tell them that very
01:36:25 8 serious, stern federal judge told me to not say anything
01:36:30 9 about what happened in federal court in Marshall today, and
01:36:32 10 I'm not going to violate his instruction. Just blame it on
01:36:36 11 me, because if you even try to answer that, you're going to
01:36:40 12 violate what I've told you.

01:36:41 13 Again, it is fundamental that the answers you will
01:36:44 14 give to the questions you will be asked at the end of the
01:36:47 15 trial that will be presented to you -- presented to you on
01:36:50 16 the verdict form, that information that you draw upon must
01:36:54 17 be only the evidence presented in open court during this
01:36:59 18 trial, including the testimony from the witnesses under
01:37:02 19 oath and subject to cross-examination and the documents and
01:37:06 20 exhibits that the Court admits into evidence. That's it,
01:37:10 21 ladies and gentlemen.

01:37:11 22 So, again, this is a fundamentally critical
01:37:16 23 instruction. So when I say don't communicate, don't
01:37:20 24 discuss, don't talk about this case with anybody, that,
01:37:23 25 again, is in the broadest sense of the term. You don't --

01:37:26 1 you don't do any research. You don't go home and get on
01:37:29 2 the Internet and do a search engine search of Apple or
01:37:33 3 PanOptis or Unwired Planet or Sam Baxter or Joe Mueller or
01:37:39 4 anybody or anything related to this case. Do not do any
01:37:44 5 research of any kind in any way.

01:37:46 6 And when I say don't communicate, that's much more
01:37:51 7 than just verbal talking to somebody. Don't email about
01:37:55 8 it. Don't text about it. Don't tweet on Twitter. Don't
01:38:01 9 post on Facebook. Don't use any social media of any kind
01:38:04 10 to communicate with anybody in any way about this lawsuit
01:38:09 11 and about this trial. That's absolutely fundamental.

01:38:14 12 Also, ladies and gentlemen, I don't think it will
01:38:16 13 happen, but I need to tell you that within the realm of
01:38:19 14 possibility, it is possible that some outside third party
01:38:24 15 might approach you during your service as jurors and try to
01:38:29 16 influence you about the decisions you'll make in this case.
01:38:33 17 There is a lot at stake for both the Plaintiff and the
01:38:36 18 Defendant, and this is a big lawsuit. It's a big case.
01:38:40 19 Small cases don't get to trial in federal court these days.

01:38:45 20 So if anybody in any way should approach you in
01:38:48 21 any fashion that you feel uncomfortable about in the least
01:38:51 22 little way, then you should immediately advise
01:38:55 23 Ms. Clendening. She will let me know, and the Court will
01:38:58 24 deal with it.

01:38:59 25 However, again, I don't think it's likely, but, as

01:39:02 1 I say, this is not an insignificant case. And it is within
01:39:06 2 the realm of possibility, and you at least need to be on
01:39:10 3 notice that it is possible, even though I don't think it's
01:39:13 4 likely to happen.

01:39:14 5 Also, ladies and gentlemen, even though we're
01:39:18 6 practicing social distancing and other things in this
01:39:22 7 trial, during the course of the trial, as you come, as you
01:39:25 8 go, as you have a lunch break, as recesses occur throughout
01:39:30 9 the trial, it's possible -- in fact, it's likely that
01:39:35 10 you're going to meet in one of the common areas either
01:39:39 11 inside the courthouse or outside the courthouse some of
01:39:42 12 these lawyers, some of these witnesses, some of the
01:39:44 13 representatives of the companies that are involved in this
01:39:47 14 lawsuit as parties.

01:39:50 15 When you run into -- and I mean that figuratively,
01:39:54 16 when you come in close proximity to any of these people,
01:39:57 17 they're not going to talk to you. They're not going to say
01:40:01 18 good morning, how are you? Did you have a good night last
01:40:07 19 night? They're not going to be engaging in friendly and
01:40:10 20 gregarious conversation, which is what we typically expect
01:40:13 21 in East Texas. But they're going to do that because
01:40:16 22 they're under instructions from me not to do that.

01:40:19 23 Again, the only information you should have from
01:40:21 24 any source when you answer any of the questions in this
01:40:27 25 trial must come from the witness stand under oath and the

01:40:32 1 exhibits I've admitted in this trial.

01:40:34 2 So if somebody would have been engaging and
01:40:36 3 friendly and spoken to you and they don't, don't hold that
01:40:39 4 against them. Don't think they're rude or unfriendly.
01:40:43 5 Don't consider it as a negative in any way. Just
01:40:48 6 understand that's the Court's instruction to them, and
01:40:51 7 they're following what I expect them to do.

01:40:52 8 Now, each of you should have in the chairs next to
01:40:55 9 you one of these plastic face shields -- just like this.
01:41:03 10 They're in a package. It opens easily. And I want to
01:41:06 11 mention something to you, ladies and gentlemen.

01:41:07 12 There's a protective film on the front and on the
01:41:11 13 back. And you have to peel that thin protective film off
01:41:17 14 of both the front and the back. Otherwise, it looks like
01:41:20 15 you're looking through a foggy window, and you don't have a
01:41:24 16 very good view of everything. Once the film is off of both
01:41:30 17 sides, you will have a clear view. I'm going to ask you
01:41:33 18 when you come back after lunch to put these on and keep
01:41:36 19 them on whenever you're in the courtroom.

01:41:37 20 I'm also going to ask you when you come back from
01:41:40 21 lunch if you would -- if you'd -- unless you feel strongly
01:41:45 22 that you should personally keep your mask on, I'm going to
01:41:47 23 ask you to wear the face shield and not wear the mask.

01:41:52 24 And let me tell you why. It's very important for
01:41:54 25 the lawyers to be able to see your entire face because

01:41:58 1 throughout this trial, they're going to be watching you
01:42:00 2 just like you're going to be watching them. And if -- if
01:42:04 3 they have an important point to get across, they need to
01:42:07 4 see your expression and your reaction and your face to know
01:42:11 5 if they've hit the target or if they missed the target.

01:42:14 6 And it's hard to do that when at least half and
01:42:17 7 maybe more than half of your face is covered up with a
01:42:22 8 mask. I'm not going to require that you take the mask off.
01:42:25 9 If you feel personally for your own well-being you'd be
01:42:29 10 better off if you wear it, I will let you continue to wear
01:42:32 11 it.

01:42:33 12 But I'm going to ask whether you keep the mask or
01:42:35 13 not keep the mask, that you wear the plastic face shield.
01:42:38 14 And with the plastic face shield, and even without the
01:42:41 15 mask, you'll have a certain level of direct personal
01:42:44 16 protection and yet the Court and the lawyers and the
01:42:48 17 participants will be able to see the entirety of your face.

01:42:52 18 You'll notice we've got a Plexiglass shield in
01:42:55 19 front of the witness stand. The witness is much more than
01:42:58 20 six feet away from the closest jurors. The lawyers will
01:43:01 21 speak to you from the podium across the room. The lawyers
01:43:03 22 should never be much closer to you than where that podium
01:43:07 23 is and where they're seated at the counsel table.

01:43:10 24 So we're going to keep an appropriate distance
01:43:13 25 every way we can. But if you would wear these -- and

01:43:16 1 they're not uncomfortable. I've -- I've worn it and tried
01:43:20 2 it -- although I'm probably further away from you than
01:43:24 3 anyone else in the courtroom here on the bench. They're
01:43:27 4 not uncomfortable at all. If you would please wear that
01:43:30 5 when you come back from lunch. And unless you feel
01:43:33 6 compelled in your own personal judgment, I'd ask you to
01:43:38 7 wear the face shield and not the mask as we go forward with
01:43:44 8 the process.

01:43:44 9 All right. Ladies and gentlemen, with those
01:43:45 10 instructions, I'm going to allow you to recess to the jury
01:43:48 11 room. And, as I say, the clerk's office has provided lunch
01:43:52 12 for you. It's there. It's 1:43 by the clock that I have
01:44:01 13 in front of me. We'll call it a quarter until 2:00. I
01:44:06 14 know the lunch is already there. I'm not going to ask you
01:44:09 15 to wait on it. I'm going to ask you to take 30 to 40
01:44:14 16 minutes to take a lunch, and then I will bring you back
01:44:18 17 out. I will have some formal instructions to give you on
01:44:21 18 the record at that time. Then we'll proceed to opening
01:44:24 19 statements from Plaintiff and then opening statements from
01:44:25 20 the Defendant.

01:44:26 21 I do not expect to hear the first witness called
01:44:29 22 until tomorrow, but I do think we'll be able to get through
01:44:33 23 both the Plaintiffs' and the Defendant's opening statements
01:44:35 24 today, so that in the morning, we can start with the first
01:44:41 25 witness for the Plaintiff.

01:44:42 1 Also, so you'll know, my best estimate of how long
01:44:46 2 the trial is going to take is based on my experience for
01:44:50 3 the last nine years since I've had this job as United
01:44:54 4 States District Judge in the Marshall Division of the
01:44:56 5 Eastern District of Texas. I find, ladies and gentlemen,
01:45:00 6 that folks in East Texas would rather come early and stay
01:45:03 7 late and be gone from their families and their work a fewer
01:45:10 8 number of days than coming mid-morning and leave
01:45:16 9 mid-afternoon and be here 5 or 10 or 15 days.

01:45:19 10 So I'm going to follow that approach in this
01:45:21 11 trial. When we start each morning, I'm going to ask you to
01:45:25 12 be in the jury room assembled and ready to go by 8:30. And
01:45:28 13 you'll need to plan your travel accordingly. That means
01:45:32 14 you'll need to get here not later than 8:15. And we'll
01:45:36 15 take recesses throughout the day, and we'll, of course,
01:45:40 16 have a similar kind of lunch brought in at a break each day
01:45:46 17 like we're having today.

01:45:47 18 But I don't expect us to leave at 5:00 o'clock.
01:45:50 19 We will probably go at least until 6:00 o'clock each day.
01:45:53 20 And if we start early and we keep the breaks fairly minimum
01:45:56 21 and we take a shorter lunch break because you don't have to
01:46:00 22 go anywhere and lunch is right in the next room and we go
01:46:03 23 until about 6:00 o'clock, depending how the witnesses fall,
01:46:07 24 we can get through with this trial in the time period I've
01:46:10 25 given you.

01:46:11 1 So you need to know going forward my expectation
01:46:15 2 is we'll start early and go late, but we'll finish quicker
01:46:19 3 than we would if we drag this process out.

01:46:23 4 I have lots of friends that are district judges in
01:46:28 5 big areas, and they start at 8:30 and finish about 4:30.
01:46:35 6 With lots of traffic in coming and going, I might do it
01:46:38 7 differently there, but in East Texas, we have the luxury of
01:46:42 8 relatively simple travel.

01:46:44 9 Now, we have distances, but we don't have big
01:46:48 10 traffic jams to deal with like in big urban settings. So
01:46:54 11 that's really what I'm hoping for -- for a schedule.
01:46:58 12 That's not written in stone, that's just to give you a
01:47:01 13 working idea of what to expect and to let your families and
01:47:05 14 those you live with what to know as when you'll be home at
01:47:11 15 night and so on and so forth.

01:47:13 16 So with those instructions, ladies and gentlemen,
01:47:14 17 I'm going to excuse you to the jury room to have lunch.
01:47:17 18 And we'll meet back in here between 2:15 and 2:30. With
01:47:23 19 that, the jury is excused for lunch.

01:47:25 20 COURT SECURITY OFFICER: All rise.

01:48:02 21 (Jury out.)

01:48:07 22 THE COURT: Be seated.

01:48:08 23 Counsel, I'm going to take a short recess, but
01:48:11 24 somewhere close to 2:00 o'clock, I need to see you in
01:48:14 25 chambers because we have apparently disputes regarding

01:48:18 1 opening demonstratives and things that need to be covered
01:48:21 2 before we can proceed with that portion of the trial.

01:48:22 3 Are there things that either side has that you
01:48:26 4 need to raise with the Court at this juncture?

01:48:28 5 MR. SHEASBY: Your Honor, based on your
01:48:29 6 instructions this morning, we've prepared a revised version
01:48:33 7 of the slides, it's narrowing your disputes, and with your
01:48:36 8 permission, I'll hand it up. There's no surprise here I've
01:48:39 9 emailed them.

01:48:39 10 THE COURT: Have you talked with Mr. Mueller about
01:48:42 11 it?

01:48:42 12 MR. MUELLER: I know they've been sent over to the
01:48:45 13 team. I've not seen them.

01:48:47 14 MR. SHEASBY: I've sent them to the team.

01:48:48 15 THE COURT: Before you approach, Mr. Sheasby, I'm
01:48:51 16 going to ask you and Mr. Mueller the first few minutes
01:48:55 17 after I recess to sit down and look at those together. And
01:48:58 18 if there are remaining disputes, I'll have one of my law
01:49:02 19 clerks here, and you can let them know what the remaining
01:49:04 20 disputes are. But it doesn't do any good for me to look at
01:49:08 21 this until I have reactions from the other side unless I
01:49:12 22 know there are still disputes.

01:49:14 23 You all meet briefly, I'll have my staff meet with
01:49:20 24 you, and shortly right after at 2:00 o'clock, we'll go over
01:49:24 25 whatever disputes regarding demonstratives and other

01:49:28 1 disputes with opening statements that may stand between us
01:49:32 2 and us going forward.

01:49:34 3 All right. Court stands in recess.

01:49:36 4 COURT SECURITY OFFICER: All rise.

01:49:37 5 (Recess.)

6

7

CERTIFICATION

8

9 I HEREBY CERTIFY that the foregoing is a true and
10 correct transcript from the stenographic notes of the
11 proceedings in the above-entitled matter to the best of my
12 ability.

13

14

15 /S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
16 OFFICIAL REPORTER
State of Texas No.: 7804
17 Expiration Date: 12/31/20

8/3/2020
Date

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